

SARKARIA COMMISSION OF INQUIRY

(Appointed under Act. No. 60 of 1952 to inquire into the Allegations against the erstwhile Chief Minister and other Ministers of Tamil Nadu.)

FIRST REPORT

[On Serial Nos. 3, 11 (a), 11 (b), 12, 15, 16, 19, 22 (c) and 22 (d) referred to the Commission *vide* Cabinet Secretariat (Department of Personnel and Administrative Reforms) Gazette Notification No. S. O. 74 (E), dated 3rd February 1976.]

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PART-I

(Preliminary and Appendices)

Sig. B

FIRST REPORT

PART I

CHAPTER I

INTRODUCTION

1. Background of events leading to the appointment of the Commission :

On November 4, 1972, Shri M. G. Ramachandran, M.L.A., of Tamil Nadu State Assembly sent a Memorandum to the President of India praying for the appointment of a Commission of Inquiry—

“(a) Against the entire Cabinet of the Tamil Nadu Government.

(b) Against all the District Secretaries of the ruling Karunanidhi D.M.K.

(c) Against the officials against whom specific charges have been made in the accompanying annexure, and

(d) Against such other officials and such other persons who are involved in abetting with corrupt Ministers and officials.”

In the Annexure to this Memorandum, he made several Allegations containing charges primarily against Shri M. Karunanidhi, the then Chief Minister of Tamil Nadu and his cabinet colleagues.

Shri M. Kalyanasundaram, M.P., and five others viz., S/Shri K. Baladhandayudham, M.P., K.T.K. Thangamani, M.L.A., K.T. Raju, P. Manickam, M. V. Sundaram and S. Narayanan, all of the Communist Party of India, submitted a Memorandum, dated November 6, 1972, to the President of India making similar allegations chiefly against Shri M. Karunanidhi and his companion Ministers of the D.M.K. Government.

On receiving those Memoranda, the Prime Minister on November 15, 1972, wrote to Shri Karunanidhi for his comments on the allegations made by the Memorialists. Thereupon, Shri M. Karunanidhi sent two letters, dated December 14, 1972, one of which was a covering letter and the other contained his comments and “detailed answers to the specific charges made by the Memorialists.” Thereafter, S/Shri M. G. Ramachandran and M. Kalyanasundaram submitted their rejoinders, dated January 10, 1973 and February 5, 1973, respectively, to the Prime Minister. The Prime Minister sent copies of these rejoinders to Shri M. Karunanidhi for further comments. In reply thereto, Shri M. Karunanidhi sent his further comments on these rejoinders and a Note to the Prime Minister under cover of his letter, dated May 28, 1973.

The aforesaid Memoranda, rejoinders and the comments and answers given by Shri M. Karunanidhi to the Prime Minister, were published by the then Government of Tamil Nadu in the form of three books. Thereupon, there was exchange of correspondence between the Government of Tamil Nadu and the Central Government in regard to these matters, which obviously remained under consideration till the issue of the Central Government Notification, dated 3-2-1976, constituting this Commission.

2. Notification setting up the Commission :

It was against the background set out above that the Central Government on February 3, 1976, issued the Notification constituting this Commission under s. 3 of the Commissions of Inquiry Act, 1952. That Notification runs as follows :

“Government of India/Bharat Sarkar Cabinet Secretariat/Mantrimandal Sachivalaya,
Department of Personnel and Administrative Reforms (Karmik Aur Prashasanik Sudhar
Vibhag)

New Delhi—110001, the 3rd February, 1976.

NOTIFICATION

S.O. 74 (E). WHEREAS the Central Government is of opinion that it is necessary to appoint a Commission of Inquiry for the purpose of making an inquiry into a definite matter of public importance hereinafter specified ;

NOW, therefore, in exercise of the powers conferred by section 3 of the Commissions of Inquiry Act, 1952 (60 of 1952), the Central Government hereby appoints a Commission of Inquiry consisting of a single member, namely, Shri Justice R. S. Sarkaria, Judge, Supreme Court of India.

2. The terms of reference of the Commission shall be as follows :—

(a) to inquire into the following allegations namely :

(i) the allegations contained in the Memorandum dated 1-12-1975 received from Sarvashri K. Manoharan and G. Vishwanathan, addressed to the President;

(ii) such of the allegations contained in the Memorandum dated the 4th November, 1972 received from Shri M. G. Ramachandran and Memorandum dated the 6th November, 1972 and 20th December, 1972 received from Shri M. Kalyanasundaram, M.P., as are specified in the Annexure to this Notification ;

(b) to inquire into any irregularity, impropriety or contravention of law on the part of any person in relation to any matter referred to in the allegations aforesaid ;

(c) to inquire into any other matter which arises from or is connected with or incidental to, any act, omission or transaction referred to in the allegations aforesaid ;

3. The Headquarters of the Commission will be at New Delhi.

4. The Commission will complete its inquiries and report to the Central Government on or before the 1st day of February, 1977.

5. And whereas the Central Government is of opinion, having regard to the nature of the inquiry to be made by the Commission and other circumstances of the case, that all the provisions of sub-section (2), sub-section (3), sub-section (4) and sub-section (5) of section 5 of the Commissions of Inquiry Act, 1952 (60 of 1952) should be made applicable to the Commission, the Central Government hereby directs, in exercise of the powers conferred by sub-section (1) of the said section 5, that all the provisions of the said sub-sections (2), (3), (4) and (5) of that Act shall apply to the Commission.

No. 381/3/76-AVD-III

Sd. R. K. TRIVEDI,

Secretary to the Government of India.

The Annexure to this Notification contains extracts from the memorandum of S/Shri M. G. Ramachandran and M. Kalyanasundaram in respect of 27 allegations. Subsequently, the memoranda of S/Shri K. Manoharan and G. Vishwanathan which contained only one Allegation has also been cyclostyled and added to this Annexure. Relevant extracts from the Annexure will be included in the Report at the appropriate places when the concerned Allegation is discussed. Briefly, it may be indicated here that, in all, I have been directed to inquire into the following Allegations :

1. MEKALA PICTURES.
2. ANJUKAM PICTURES.
3. TRACTOR.
4. GOPALAPURAM HOUSE.
5. ANJUKAM PATHIPAKAM—MURASOLI.
6. SON'S HOUSE, TIRUVARUR.
7. DHARMA.
8. AMIRTHAM.

9. VAIDYALINGAM.
10. VEERANAM.
11. ANBIL — AERIAL SPRAYING — NATHAN PUBLICATIONS.
12. KANDAPPAN—T.I.C.C.
13. J. K. K. ANGAPPA CHETTIAR.
14. SAMAYANALLUR POWER STATION.
15. NEW GLOBE.
16. MUD FOR OFFICERS—MONEY FOR MINISTERS.
17. SUGAR SCANDAL.
18. V. S. T. MUDALIAR.
19. A. L. SRINIVASAN.
20. KODAI—PALANI ROAD.
21. PRIVATE TRUSTS.
22. ANBIL DHARMALINGAM.
23. ADITANAR — VALLANADU BANK.
24. TRADE UNIONS.
25. INTIMIDATION OF PRESS..
26. MISUSE OF STATE MACHINERY FOR PARTY.
27. POLICE EXCESSES.
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CHAPTER II

PRELIMINARIES

(a) Administrative arrangements :

Although the Notification appointing the Commission was issued on the 3rd February, 1976, the Commission effectively started functioning only from the middle of April, 1976. The Secretary to the Commission joined on April, 1976. Thereafter, it took about a month to complete other administrative arrangements such as suitable accommodation for the office of the Commission, getting necessary staff, furniture and other equipments, allotment of funds, etc.

(b) Appointment of Investigating Officers under Sec. 5-A :

Soon after the constitution of the Commission, I perused the Memoranda, Rejoinders that had been submitted by the Memorialists to the President of India and the comments made and the answers given by Shri M. Karunanidhi on his behalf and on behalf of his cabinet colleagues to the Prime Minister and the allied material which was at my disposal. On such perusal, I formed an opinion that the task entrusted to me was of immense magnitude and if it had to be completed effectively and promptly within the time-limit specified in the Central Government Notification dated 3-2-1976, a preliminary investigation and collection of material from innumerable sources, persons and places would be necessary. With that end in view, I, on April 12, 1976, made this order :

“ Keeping in view the immensity of the task entrusted to the Commission, I think it necessary for the proper conduct of the enquiry to have a preliminary investigation made. For this purpose, it is essential to utilise the services of the investigating agencies of the Central Government and of the State Government of Tamil Nadu. Necessary communications, as contemplated under s. 5-A of the Commissions of Inquiry Act, 1952 may therefore be sent to the Central Government and the State Government of Tamil Nadu requesting them to lend the services of their investigating agen-

cies, namely, the Central Bureau of Investigation/Delhi Special Police Establishment, functioning under the control of the Government of India ; and the like agencies functioning under the State Government of Tamil Nadu, to assist the Commission. The Governments concerned may be requested to instruct the said agencies to undertake the investigations assigned by the Commission forthwith and to execute or cause the execution of process/orders which may be issued by the Commission from time to time."

On receiving the requisite concurrence of the Central and the State Governments, orders of the Commission were conveyed as per communications dated May 10, 1976, and May 13, 1976, through proper channel to the officers of Central investigation agency (C.B.I.) and the State investigating agency who had been nominated to assist the Commission. The C.B.I. team was headed by Shri Rajagopalan, and at the outset included :

1. Shri Rajagopalan, SP-II, EOW, C.B.I., Madras.
2. Shri Sriramulu, D.S.P., C.B.I., Madras.
3. Shri Unnikrishnan, D.S.P., C.B.I., Madras.
4. Shri Narasimhan, D.S.P., C.B.I., Madras.
5. Shri Kothandapani, Inspector, C.B.I., Madras.
6. Shri Venugopal, Inspector, C.B.I., Madras.

The team of the State investigating agency, headed by Shri G. Ganesan, Superintendent of Police, consisted of :

1. Shri G. Ganesan.
2. Shri J. E. Sriramulu, D.S.P.
3. Shri T. Gangadharan, D.S.P.
4. Shri K. Samiraj, Inspector of Police.
5. Shri Manoharan David, Inspector of Police.

By these communications, dated 10-5-1976 and 13-5-1976, the C.B.I. team and the State team were directed to :

- (i) "investigate into the Allegations that had been referred to the Commission and for this purpose, summon and examine persons who are conversant with the facts pertaining to these Allegations ;
- (ii) Collect all relevant documents ; and
- (iii) submit a report to the Commission on the result of their investigations."

Subsequently, more officers were drafted with my approval to these teams. Shri R. K. Swamy Naidu, D.S.P. was drafted to the C.B.I. team and S/Shri G.S. Chelladurai, D.S.P., K., Ramalingam, D.S.P., A. Dasaratha Raman, Inspector, J. Jeenadathan, Inspector, R. Seshadri Inspector, M. Balakrishna Menon, Inspector were added to the State team.

CHAPTER III

THE FIRST SITTING

Nature, object and scope of the task before the Commission :

The first sitting of the Commission was held at Vigyan Bhavan, New Delhi on the 14th May, 1976, pursuant to the public notice issued on the 15th April, 1976. S/Shri A. K. Sen, N.C. Raghavachari, Senior Advocates with S/Shri S. Kannan, A. Bala Pajnor and C. Ponnaiyan appeared for Shri M. G. Ramachandran, Shri K. Manoharan and Shri G. Vishwanathan, Memorialists. Shri K. T. Palpandian, Advocate appeared for Shri M. Kalyanasundaram, Memorialist. S/Shri Shanti Bhushan and G. Ramaswamy, Senior Advocates, and S/Shri N. Shanmugham, N. Ganapathy, K. Rajendra Chaudhry, M. Somasundaram and Mrs. Veena Khanna appeared for Shri M. Karunanidhi, the former Chief Minister of Tamil Nadu, and for his former Cabinet colleagues, S/Shri S. Madhavan, P. U. Shanmugham, Anbil Dharmalingam, S. J. Sadiq Pasha and O. P. Raman. Dr. Y. S. Chitale, Senior Advocate and Shri Vineet Kumar, Advocate appeared for Shri Si. Pa. Aditanar, another former Minister.

Introductory Remarks :

At the outset, I made these introductory remarks :

“ Spoken words have got a tendency to run wild and then present themselves in different colours, in different hands, against different settings. In order that some discrepancies between spoken words and what goes on the record do not creep in due to mistake, oversight or inadvertence or for any other reason, it is directed that the substance of everything material said here at an open hearing of this Commission shall go on record. I would advise the Press Reporters that before making use of their notes, they should check the same with the Secretary to the Commission, lest any mistake in reporting occurs. The same applies to other gentlemen who may like to take notes of the proceedings of the Commission. All important orders will be announced, and after they have been written and signed, copies of those orders which are passed at an open hearing of the Commission will be made available on payment of nominal charges or without charges. If certified copies are to be obtained for any other purpose, for instance, for use in a Court of Law, then of course, charges at the same scale at which they are leviable in the Supreme Court will be charged.”

I then explained the nature, object and the scope of the inquiry entrusted to the Commission, as follows :

“ Before commencing the proceedings, it is necessary to explain in a few words the nature, object and scope of the task entrusted to the Commission. Let it be clear that the function of the Commission is to make a fair, fact-finding enquiry circumscribed by its terms of reference, and not to embark on a random witch-hunt. The nature of its proceedings, albeit judicial, do not partake the character of a criminal trial, much less can the respondents before the Commission be relegated to the position of accused persons facing a trial. The findings of a Commission constituted under the Commissions of Inquiry Act, have no force *proprio vigore*. Nevertheless, its findings, being the precious end product of a just, thorough and relentless endeavour to reach at truth and to expose falsehood, *per se* serve a beneficent purpose of immense public importance. To achieve that end, the Commission, while remaining within the broad bounds demarcated by the statute, proposes to devise a procedure founded on fundamental canons of natural justice. Whereas the Memorialists who have levelled these allegations, and others who are pursuing the same before the Commission, will be given a due chance to substantiate them, the respondents whose conduct is under enquiry, will also be equally afforded a fair and full opportunity to rebut these allegations and thus to clear themselves of the clouds of suspicion that have been cast by the allegation in question. The Commission, therefore, solicits and expects full and uninstinct co-operation from all concerned in its task, the sole aim of which is vindication of truth.”

Questions with regard to the nature of the enquiry again arose at a latter sitting of the Commission, when it was contended by Counsel for the respondents that the enquiry against them should not be proceeded with in respect of an Allegation which the Memorialists may not reiterate or press in their affidavits filed pursuant to the notice under Rule 5 (2) (a) of the Commissions of Inquiry (Central) Rules, 1972. The contention was negative and the position was clarified thus :

Commission's task is essentially inquisitorial. Memorialist is not *dominus litis* :

“ From a plain reading of s. 3 of the Act, it is clear that a Commission is appointed by the appropriate Government only for the purpose ‘ of making an enquiry into any definite matter of public importance and performing such functions and within such time, as may be specified in the notification.’ The Central Government Notification, dated February 3, 1976, issued under that Section, imposes a duty on the Commission, to enquire into the matters specified therein and perform its functions accordingly. The task of the Commission is *essentially inquisitorial*. It is inherent in the inquisitorial procedure that there is no *lis*. There is no plaintiff or defendant, no prosecutor or accused. The Memorialists on whose memorandum the Central Government has set up the Commission, are not *dominus litis*. They cannot, stop the enquiry by abandoning their allegations. Unless and until the Central Government declares under s. 7 of the Act, that this Commission shall cease to exist, it is duty-bound to proceed with the enquiry and make its report to that Government. The Commission is under a statutory obligation to collect evidence not only from the Memorialists but also from any member of the public who may be able to furnish information bearing on the subject-matter of the enquiry, *vide* Rule 5 (2) (b). The Commission, therefore, cannot abdicate its functions or divert itself of its statutory duty to enquiry into any of the allegations which comprise its terms of reference, merely because the Memorialists have now chosen not to pursue or press that allegation.”

Regulations under s.8 :

Draft Regulations prepared by me were then read at the hearing and were approved and settled with a few minor amendments suggested by the Counsel for the Respondents. Regulations as finalised with consensus may be seen at Appendix-I to this Report.

Misc. Petition No. 1/SCI/76.—

At this hearing, Shri Shanti Bhushan, Counsel for the Respondents (except Shri Si. Pa. Aditanar) moved two petitions. The first petition was filed on behalf of the D.M.K. Party. It sought three reliefs, viz.,

- (i) The Commission should issue directions to the Central Government, C.B.I., Special Cell of the State Government etc., not to carry on any investigation without a specific direction from Commission.
- (ii) Any document already got or seized by any of these agencies should not be placed before the Commission. Any statement recorded by them should not also be admitted as evidence.
- (iii) The trial by the press which is being carried on by "Makkal Kural" should not be permitted, as this may prejudicially affect the minds of the public in respect of matters which are already under enquiry by the Commission.

By my order, dated May 21, 1976, I, in accordance with the procedural Regulation 23, devised by me, directed that the petition filed on behalf of the D.M.K. Party be removed off the record and returned to the petitioners, since its contents were irrelevant and the main object of the petition was to ventilate grievances on behalf of a political party, the investigation of which was not the concern of the Commission. It was further observed that the Commission had no jurisdiction to issue general directions as prayed for in the petition, to the investigating agencies of the Central and the State Governments (investigating cases under the Code of Criminal Procedure or under other enactments) or to the Censor Officer of the Government of Tamil Nadu. The parties were informed that orders had already been issued by the Commission on May 10, 1976 and May 13, 1976 authorising certain officers of the C.B.I. and the State Investigating agency, respectively, to carry out investigations under s. 5-A of the Act in respect of matters under enquiry. Lists of the names of those officers of the C.B.I. and of the State Police whose services were being utilised by the Commission under s. 5-A, were read out and handed over by the Secretary to the Commission to Shri Ramaswamy and Shri Vineet Kumar, Counsel for the Respondents, there and then. It was then observed that the allegations of improprieties, irregularities or wrongful acts in Petition No. 1/SCI/76 did not relate to the conduct of those officers of the investigating agencies whose services were being utilised by me under s. 5-A. The question whether a particular material or piece of evidence was collected illegally and was therefore, inadmissible, was left open to be decided at the stage of final arguments.

Misc. Petition No. 2/SCI/76.—

In the second petition (Misc. Petition No. 2/SCI/76), by Shri M. Karunanidhi and others, clarification was sought as to the construction and scope of the terms of reference stated in clauses (b) and (c) of Paragraph (2) of the Central Government Notification, dated February 3, 1976.

Construction and scope of the Terms of Reference.—

After hearing the Counsel on both sides, I explained the matter as under :

"The Central Government Notification dated February 3, 1976, issued under s. 3 of the Commissions of Inquiry Act, provides that the terms of reference of the Commission shall be as follows :

'(a) to inquire into the following allegations, namely :—

- (i) the allegations contained in the Memorandum dated 1st December, 1975, received from Sarvashri K. Manoharan and G. Vishwanathan, addressed to the President.
- (ii) such of the allegations contained in the Memorandum dated the 4th November, 1972, received from Shri M. G. Ramachandran and Memorandum dated the 6th November, 1972, and 20th December, 1972, received from Shri M. Kalyanasundaram, M.P., as are specified in the Annexure to this notification ;

(b) to inquire into any irregularity, impropriety or contravention of law on the part of any person in relation to any matter referred to in the allegations aforesaid ;

(c) to inquire into any other matter which arises from, or is connected with or incidental to, any act, omission or transaction referred to in the allegation aforesaid.'

The point canvassed by Mr. Shanti Bhushan is that the words "any person" occurring in the aforesaid clause (b) are too vague and indefinite and thus, what is contained in clause (b) is neither "definite" nor a "matter of public importance" within the meaning of s. 3 of the Act. Counsel submits that before embarking on the enquiry the Commission should seek a clarification of the true import of the words "any person" occurring in clause (b) from the Central Government. A similar contention has been raised in regard to clause (c) of the terms of reference. It is argued that this clause, also is too general and indefinite. Thus, in a way the Counsel is questioning the validity of clauses (b) and (c) of the terms of reference contained in paragraph (2) of the Notification.

These contentions must be repelled. It is undisputed that clause (a) of the terms of reference contained in the said Notification, does relate to "definite" matters of "public importance." Clauses (b) and (c), in terms, relate to clause (a). Clauses (b) and (c) are therefore not to be construed in isolation. They have to be read along with the matters mentioned in sub-clauses (i) and (ii) of clause (a). Indeed in clause (b) the words "any person" are qualified by the succeeding words "in relation to any matter referred to in the allegations aforesaid." The word "aforesaid" puts it beyond doubt that the ambit of this clause is to be considered with reference to the allegations which form the subject matter of clause (a). Similarly, the scope of clause (c) is to be ascertained with reference to the allegations in clause (a). Thus read, these clauses (b) and (c) cannot be said to be vague or invalid on the ground that they do not relate to a 'definite matter of public importance.' These clauses have further to be applied in the light of what is provided in s. 8-B of the Act and the other provisions in the Act and the rules framed thereunder. At this stage, when there is no concrete case touching the interpretation and scope of the Commission's terms of reference, it will not be advisable to say anything more with regard to the scope of the terms of reference further, if and when such explanation becomes necessary in the light of facts that may emerge as the enquiry proceeds. Suffice it to say now, that there is no apparent ambiguity or infirmity in the terms of the reference contained in the aforesaid Notification, dated Feb. 3, 1976, requiring clarification by the Central Government."

Consideration of the scope of the terms of reference of the Commission was raised more or less with specific reference to certain portions of statements/affidavits made by the Memorialists before the Commission by 27 Petitions registered as Misc. Petitions Nos. 20, 23-47 and 49/SCI/76 filed by the Respondents.

Twentysix Petitions were disposed of by me by my order, dated August 25, 1976. Therein I had pointed out that clause (c) of the Commission's terms of reference (*vide* para 2 of the Central Government Notification dated 3-2-1976) embodies an expanded version of the fundamental principle governing relevancy of collateral facts which underlies section 6, 7, 8, 9 and 11 of the Evidence Act. I observed :

"For purpose of Regulation 23 therefore, the relevancy or otherwise of a matter to the principal matters specified in clause (a) of paragraph 2 of the Notification, is to be judged in the light of the basic principles underlying the provisions of the Evidence Act, as amplified by the aforesaid clause (c). In short, only those matters which have no direct or indirect bearing on the proof or disproof of the principal Allegations specified in the said Notification and are thus outside the scope of the Commission's terms of reference, will fall within the exclusionary operation of Regulation 23.

The first step in the process of judging the relevancy or otherwise of the statements objected to would be to ascertain from a construction of the Allegations made by the Memorialists, as extracted and referred to the Commission under the Notification, the principal matter *i.e.*, 'definite matter of public importance' required to be enquired into. If the statement in question is found wholly unrelated and alien to the principal matter, thus ascertained, the question of going over to clause (c) to consider its application would not arise. Such a statement being manifestly irrelevant to the principal matters under enquiry, should be deleted. If, however, the statement is of a fact which may have an indirect bearing on any principal matter in issue or evinces a tendency, either taken singly or in conjunction with other facts, to make the existence or non-existence of any principal matter probably or even reasonably possible, then the question of considering the application of clause (c) would arise.

The first step in the process indicated above, involves a construction of the matters or Allegations as specified in the Notification. The question arises what general principles are to be followed in construing the matters so specified? In this connection, it is to be noted that the matters specified in the Annexure to the Notification are *verbatim* extracts from the memoranda of the Memorialists that had been submitted to the

President. These Memoranda are extremely informal documents. Broadly speaking, they contain a list of grievances against Shri Karunanidhi and six or seven of his erstwhile Ministers. They are inartistically drawn up. Consequently these memoranda or their verbatim extracts in the Notification, cannot, for the purpose of construction, be equated with a statute or other document drafted by an expert draftsman. These Allegations specified in the Notification must receive a spacious interpretation which not only comports with the general tenor and intent of the memoranda extracted in the Notification, but also vindicates the purity and integrity of public life which is the primary object of ordering an enquiry under s. 3 of the Commissions of Inquiry Act."

Issue of notices under Rule 5 (2) (a) and 5 (2) (b).—

At the first sitting of the Commission, it was further directed that notices under rule 5 (2) (a) of the Commissions of Inquiry (Central) Rules, 1972, be first issued to the Memorialists requiring them to furnish their statements supported by affidavits in respect of matters specified in the notice by the 7th June, 1976. Similar notices under rule 5 (2) (a) should also be issued to the seven respondents viz., Shri M. Karunanidhi, S. Madhavan, P.U. Shanmugham, Anbil Dharmalingam, S. J. Sadiq Pasha, O. P. Raman and Si. Pa. Aditanar, as well as to the 33 persons who, in my opinion, were likely to be prejudicially affected by the enquiry and deserved to be given an opportunity of being heard, requiring them to file their statements supported by affidavits by the 12th July, 1976. It was declared that the Respondents would be entitled to get one copy each of the affidavits filed by the Memorialists which they could collect either in person or through their agents after the 17th June, 1976. It was also directed that a notification under rule 5 (2) (b) should also be simultaneously published in the newspapers, Hindustan Times, Times of India, Statesman, Indian Express, Hindu, Dinamani, SwadesaMitrani inviting all persons acquainted with the subject matter of the inquiry to furnish to the Commission a statement relating to matters specified in the Central Government Notification, dated February 3, 1976, by the 12th July, 1976.

Locus standi of the State Government:—

Another point which was seriously controverted by the Counsel at this hearing was whether the Government of the State of Tamil Nadu had *locus standi* to join as a party having a right to address the Commission and to cross-examine witnesses who might be examined by the Commission.

I had already made an order on 14th May, 1976, under s. 5 (2) of the Act directing that some responsible officer or duly recognised agent should attend all the hearings of the Commission to assist the Commission in requisitioning information and records from time to time on such points or matters as in the opinion of the Commission would be useful or relevant to the subject matter of the inquiry. This order was made in view of the fact that most of the relevant evidence consisting of official records was in the control and custody of the Tamil Nadu Government.

On the basis of this order, Shri Vanamamalai, Advocate has been appearing on behalf of the State Government of Tamil Nadu before the Commission.

Shri Chitale, Counsel for Shri Aditanar, Respondent, advanced arguments that under s. 8-C of the Act only three categories of parties have been given a right to address the Commission and to cross-examine witnesses viz., (i) the "appropriate Government" which in the instant case is the Central Government; (ii) persons whose conduct is being inquired into or who are likely to be prejudicially affected by the enquiry, and (iii) "any other person whose evidence is recorded by the Commission."

It was maintained that since the State Government, as such, does not fall under any of these three categories and s. 8-C is exhaustive, the State Government cannot be allowed to come in as a party and exercise the same right which can be claimed only by the three categories covered by s. 8-C. It was argued that the State Government was an "inappropriate Government" and there was an implied prohibition in s. 8-C against such a Government being allowed to intrude into the proceedings before the Inquiry Commission set up by the Central Government under s. 3 of the Act; that what was not permitted under s. 8-C could not be done indirectly by resorting to s. 8. The contention of Shri Chitale was disposed of in these terms:

"I am inclined to agree with Mr. Chitale that at this stage, the State Government does not fall under any of the three categories enumerated in s. 8-C who can claim to be represented before the Commission, and to address arguments and cross-examine witnesses. But I am not inclined to agree with the learned Counsel that s. 8-C is exhaustive. There are no words in this section that facility of addressing the Commission and cross-examining witnesses cannot be extended to any other person or party which does not fall under any of the categories enumerated in that section.

Section 8-C does not derogate from the discretionary powers of the Commission to extend to any person or Government other than the one mentioned in s. 8-C, the facility of cross-examining witnesses, addressing the Commission and being represented before it. The source of this power of the Commission in s. 8, and is otherwise implicit in the Government notification issued under s. 3 of the Act. As pointed out by Chief Justice S. R. Das in his Report of Inquiry against Shri Pratap Singh Kairon, the enquiry to be made by a Commission set up under the Act differs from a civil litigation and a criminal proceeding before an ordinary court of law. In a civil action, there is plaintiff and a defendant and a *lis* or issue between them which the plaintiff may choose to abandon. In a criminal case, there is a prosecutor and an accused and a charge which the prosecutor may withdraw, with or without the permission of the Court as prescribed in the Code of Criminal Procedure. In both cases, the issue or charge has to be determined by the Court by judgment or an order which becomes binding and enforceable between the parties. But in an inquiry under the Act, there is no plaintiff or a prosecutor on whom onus of proving the plaintiff's case or the prosecution case rests under the law. The Act and the Notification issued by the appropriate Government under s. 3 impose a peremptory duty on the Commission to collect evidence *from whatever source possible* by all legitimate and fair means, bearing on the allegations comprising its terms of reference and to sift that evidence and record its findings. Excepting where the appropriate Government takes action under s. 7, the Commission cannot divest itself of the duty of making the enquiry to arrive at the truth and to report its findings to the Government.

If a party, Government or a person other than the one mentioned in s. 8-C is vitally and *bona fide* interested in the enquiry and the Commission thinks that the participation of that person or Government in the proceeding would facilitate its task of arriving at the truth or is otherwise necessary for a complete and effectual accomplishment of the task entrusted to it, it will be justified to allow, in its discretion, that person or Government to join the proceedings and avail of all the facilities enumerated in clauses (a), (b) and (c) of s. 8-C."

Subsequently, by various orders made from time to time, I did allow Counsel for the State of Tamil Nadu to put questions by way of cross-examination to the witnesses examined by the Commission and also to address the Commission. Shri Vanamamalai had also been directed to address the Commission at the time of final arguments.

Reasons for allowing the State to play an active role.—

To allow the State to play an active role had become absolutely necessary for two reasons. Firstly, the documentary evidence which mostly consisted of the official records was in the possession of the State Government and it was only that Government which could explain the circumstances relating to those records. Secondly, the Central Government had contended itself with a passive role. It had not filed any list of its witnesses whose evidence could be taken on affidavits or by oral examination, despite the fact that all the 'parties,' including the Central Government, were directed to file the lists of witnesses by the 10th September, 1976. In the circumstances, it was manifest that participation of the State Government and its presence before the Commission was necessary in order to enable the Commission to effectively and completely accomplish the task entrusted to it.

The details of the arguments at the sitting of May 14, 1976, and their consideration will be found in my order pronounced on May 21, 1976 (Appendix II).

CHAPTER IV

PREPARING THE MATERIAL FOR THE INQUIRY

Meeting with Investigating Officers.—

On May 29, 1976, I held a meeting at Madras of the Officers of C.B.I. and the State Investigating Agency who had been authorised to conduct investigation under s. 5-A of the Act. At this meeting, I explained to these officers in detail the nature of their functions and the scope of their powers; what they should do and what they should not do. The officers were told that their powers to search and seize documents or property, on their own, were not the same as the powers of the police officers investigating an offence under the Code of Criminal Procedure, and that if any of them had reason to believe that books of account or other document relating to the subject matter of the enquiry might be found from a particular place in the possession and control of any person and that such person was not willing to produce the same or that such evidence was likely to disappear if immediate search and seizure was not made, the proper course for the investigating officer would be to make a reference to the Commission for orders under sub-sec. (3) of s. 5.

On a query made by some of the officers, it was explained that they were competent to summon and examine all persons including the Respondents. It was however impressed on them that before commencing the examination of the Respondents or any witness produced by them, the investigating officers should first collect all the evidence in support of the charges and submit the same to the Commission with an interim report by the 26th July, 1976, which was the next date for the sitting of the Commission. Such reports which were to be made by the senior Officers heading the investigating teams were to contain lists of important witnesses and the list of their statements, documentary evidence and a list thereof. Evidence was required to be sorted out and arranged chargewise. The officers were not required to discuss the evidence and record their conclusions without a further direction from the Commission. No such direction was, in fact, issued.

Since at the time of giving these instructions, the period specified in the notices/notification issued by the Commission under rule 5 (2) had not run out, a query was made by the officers that if a witness contacted for examination was desirous of voluntarily filing an affidavit/statement to the Commission in response to its notice/notification, should the investigating officer even in that eventuality record his statement ?

Thereupon, it was clarified by me that if a witness volunteers to file an affidavit before the Commission, he should be asked to send his affidavit directly to the Commission, and in any case, the investigating officer was required to examine the witness and record his statement in full. A memorandum of the proceedings of that meeting with the investigating officers held on 29-5-1976, was drawn up. It was impressed on the officers that they should conduct the investigation in a most fair, impartial and upright manner and they should never allow their zeal to outrun their discretion or to overstep the bounds demarcated by the statute.

With my approval, the C.B.I. Team undertook to investigate Allegations 1 to 10, 11 (b), 12, 14, 15, 16, 17 and 20 and the State Team Allegations 11 (a), 13, 16, 19 and 21 to 28. The officers leading the two teams were told that they could, after intimation to this Commission, make adjustments in this distribution of work, by mutual agreement. The Memorandum contains substantially all the instructions given by me on that occasion to the investigating officers. (Appendix III).

On June 19, 1976, Shri Shanti Bhushan, moved three petitions on behalf of Shri M. Karunanidhi and others. (excepting Shri Si. Pa. Aditanar).

In the first petition (Misc. Petition No. 3/SCI/76) it was prayed that the affidavits filed by the memorialists, S/Shri M. G. Ramachandran, M. Kalyanasundaram and K. Manoharan and one P. Kannan on behalf of M.G. Ramachandran, be rejected, or, alternatively, those deponents be directed to remove the defects and file fresh affidavits. This petition came up for hearing on June 26, 1976. In the second petition, (No. Misc. Petition 4/SCI/76) relief was sought that affidavits filed by the Memorialists and others in support thereof should not be published in any newspapers without express orders of the Commission. Since the Respondents were disputing relevancy and admissibility of these affidavits, relief sought in this petition was allowed and it was directed that copies of this order be sent to the State Government and the Central Government for information and necessary action.

The third petition Misc. Petition No. 5/SCI/76, contained a prayer for certain directions with regard to inspection of records. This was also posted for hearing on 26-6-1976.

S/Shri Maran, M.P. (Nephew of Shri M. Karunanidhi), M.K. Stalin (son of Shri M. Karunanidhi), Kapali, Kattur Gopal and S. Kandappan to whom notice had been issued under rule 5 (2) (a), also filed separate petitions. The petitioners were reported to be under preventive detention. They prayed that the Commission should issue directions to the State Government to release the petitioners temporarily or give them such facilities as would enable them to prepare their statements on affidavit in reply to the notices issued to them. These petitions were also posted for hearing on June 26, 1976.

The fourth sitting of the Commission was held at Vigyan Bhavan, New Delhi on 26-6-1976. After hearing Counsel for the parties, I passed these orders :

Misc. Petition No. 3/SCI/76.—

Memorialists were directed to file by the 15th July, 1976, after inspection of the records, further and better affidavits as would be in conformity with Regulation 10 and the other Regulations framed by the Commission. It was further settled that if the said defects were not removed by the Memorialists even in their further affidavits, objection which might be raised by the Respondents in regard thereto, would be considered at the time of final arguments.

(ii) Misc. Petition No. 5/SCI/76.

It was directed that the Memorialists as well as the Respondents could apply for inspection of the records which were either in the custody of the State Government or the investigating agencies assisting the Commission. Shri B. Vijayaraghavan, O.S.D., Government of Tamil Nadu, who was stated to be in custody of those records, was authorised to receive applications for inspection and give all facilities to the parties for inspection of the records in his custody. The last date for furnishing affidavits by the Respondents was extended at the request of the Respondents from July 12, 1976, to July 24, 1976, and the Respondents were directed to furnish their affidavits in response to the notice served on them under rule 5 (2) (a) in respect of all the 28 Allegations by the 24th July, 1976, positively.

(iii) Misc. Petitions 6-10/SCI/76 filed by the detenus were disposed of with the direction that the State Government should relax certain restrictions imposed by the Commissioner of Police regarding interviews with the detenus by their Counsel. Shri Vanamamalai, appearing on behalf of the State Government, gave an undertaking that the State Government would be prepared to carry out any direction that the Commission might give in the matter and that if any difficulty arose, Counsel for the detenus could bring the matter to the notice of the Home Secretary, Government of Tamil Nadu.

Shri N. C. Raghavachari, Counsel for the Memorialist, Shri M. G. Ramachandran moved a petition, Misc. Petition No. 14/SCI/1976, that the Commission's exparte, order, dated June 19, 1976, on Misc. Petition 4/SCI/76 should be reconsidered in view of the fact that the affidavit of Shri M. G. Ramachandran had already been published in the Tamil Daily 'Tamil Mani' printed at the Murasoli Press, which fact was not brought to the notice of the Commission. I, thereupon, ordered that the ban imposed by my order, dated June 19, 1976, on the publication of affidavits of Shri M. G. Ramachandran and the other Memorialists be lifted.

CHAPTER V

PRELIMINARY OBJECTIONS TO AFFIDAVITS

Affidavits from the public.

The 5th sitting of the Commission was held on August 2, 1976, in response to the notification published by the Commission under rule 5 (2) (b). In all 168 affidavits or statements were received from the members of the public. Of these, 58, i.e., Sl. Nos. 111 to 168 were received after the due date, July 12, 1976. This delay appears to be postal delay or delay in transit. The delay was condoned. After scrutiny of these affidavits, it was found that three affidavits (Sl Nos. 92, 104 and 124) did not relate to the subject-matter of the inquiry and were irrelevant. I, therefore, ordered that the same be removed from the record and returned to their deponents on request. I also declared that the Memorialists and Respondents could collect copies of all the affidavits from the office of the Commission as and when they were got ready.

Scope of Regulations 14 & 15 explained.

At this stage, I also explained the import of Regulations 14 and 15 that had been devised by me, in the light of the statutory provisions and the decisions of the Supreme Court, in *State of Jammu and Kashmir v. Bakshi Gulam Mohammad* (ibid). It was clarified that no party has a general right of cross-examination of those who have filed their affidavits, nor can a party as of right require the Commission to call for witnesses for oral examination; that as a rule the Commission shall receive evidence on affidavits as provided in s. 4 (c) of the Commissions of Inquiry Act, 1952, and if any party wants the Commission to call any deponent of an affidavit for oral examination/cross-examination, he should make an application in accordance with the Regulations devised by the Commission, indicating how his oral examination is necessary in the interest of justice and why his evidence on affidavit shall not suffice. It was further indicated that the appropriate stage for such an application would be after the receipt of the reports of the investigating officers assisting the Commission under s. 5-A and the filing of the complete counter-affidavits by the Respondents.

Twentysix petitions (Nos. Misc. Petitions Nos. 20, 23-47/SCI/76) were filed by the Respondents through their Counsel praying for rejection of certain affidavits or expunction of certain portions in the affidavits filed by the Memorialists, on the ground of irrelevancy.

Misc. Petition No. 49/SCI/76 was filed on behalf of Sri Kalyanasundaram, Memorialist, for expunction of certain portions in paragraphs 2 to 26 of the affidavit of Shri M. Karunanidhi.

These petitions were listed for hearing on August 24, 1976.

The sixth sitting of the Commission was held on August 3, 1976, at New Delhi. A petition (Misc. Petition No. 21/SCI/76) was made on behalf of Shri M. Karunanidhi and 5 others alleging that the detaining authorities had not correctly interpreted the Commission's order, dated July 26, 1976. After hearing Counsel for the parties and Counsel for the State, it was directed that the detaining authority should afford every reasonable facility to the Counsel of the detenus to seek instructions from their clients from time to time so long as proceedings in respect of them continue before the Commission.

Another petition (Misc. Petition No. 45/SCI/76) was filed by Shri M. Karunanidhi and other Respondents for extension of time for inspection of records by another three months. I granted two months' time commencing from 3-8-76 for inspection of the records relating to Allegation 10 (Veeranam Project). So far as the other Allegations were concerned, one month's further time commencing from 3-8-76 was granted to the Respondents. They were also permitted, in deference to their request, to file affidavits (rejoinders) by September 10, 1976, with regard to the facts alleged or averred in the statements of the affidavits filed in response to the notices/notification issued under rule 5 (2). I also directed the investigating teams to submit their investigation reports by 21-8-1976. It was further directed that as and when these reports were received, notice of the same would be sent to the parties through their Counsel, to enable them to inspect the same.

I also directed the Counsel for the State Government to file a list/statement containing particulars of all records which appear to be relevant to the allegations in question so that the inspection allowed to the inspecting parties could be confined to the inspection of relevant records with consequent saving of time, expense and botheration.

The circumstances appearing in the evidence collected by the Investigating Officers nominated to assist the Commission under s. 5-A in respect of Allegation No. 11 (a) (Nathan Publications), carried an imputation against Dr. V. R. Nedunchezian, the then Education Minister in the Tamil Nadu Government that he had committed gross violation of the rules and norms of propriety in appointing Nathan Publications as distributors of Text Books. I, therefore, considered it necessary to give him a reasonable opportunity of being heard in the inquiry and to produce evidence, if any, in his defence and accordingly, directed issue of notice to him under Section 8-B of the Commissions of Inquiry Act, 1952, read with rule 5 (2) (a) of the Commissions of Inquiry (Central) Rules, 1972, on 7-8-76.

Seventh, Eighth and Ninth sittings of the Commission were held on 23rd, 24th and 25th August, 1976 at New Delhi. On these days, I heard arguments relating to 27 petitions (Misc. Petitions Nos. 20, 23-47 and 49/SCI/76) in which expunction of certain statements in the affidavits of the Memorialists and others was sought.

After hearing Counsel on both sides as well as Counsel for the Central Government and the State Government, I first elucidated the scope of the terms of reference contained in para 2 of the Government Notification, dated 3-2-1976, constituting the Commission. That part of the Commission's order has already been extracted in this Report earlier. Thereafter, I divided the statements objected to into three categories.

In the first category were placed those statements which manifestly sought to introduce a different and new charge which had no bearing whatever on the subject-matter of the allegations specified in the Government Notification constituting the Commission. Such statements or extracts from the affidavits of Sarva Shri M. G. Ramachandran, M. Kalyanasundaram are given in Schedule 'A' appended to that order which is as follows :

SCHEDULE 'A'

Statements in the affidavits to be expunged

ALLEGATION SERIAL NO. 2 :

From Shri M. G. Ramachandran's affidavit dated 13-7-1976, para 6, clause (f), namely :

"Muthu Manram" after Shri Karunanidhi's son's name was inaugurated by no less than a Cabinet Minister by name N. V. Natarajan and this was a continuation of the effort by Shri Karunanidhi to advertise his business (although in the name of his relatives), and, in this, he abused his influence for the benefit of his son."

ALLEGATION SERIAL NO. 4 :

From Shri M. G. Ramachandran's affidavit, dated 13-7-76, relating to House No. 2, 4th Street, Gopalapuram, Madras—

Para 4 :

"The value of the house together with the cost of repairs and additions is about Rs. 2,50,000/-. The House is under-assessed for purposes of House Tax."

"House Property bearing Door No. 5, 2nd Main Road, Gopalapuram, Madras was purchased in the name of Selvam who has married Shri Karunanidhi's daughter by his second wife. The value of the house is about Rs. 2,50,000/- to Rs. 3,00,000/-".

ALLEGATION SERIAL NO. 5 :

From para 3 of Shri M. Kalyanasundaram's affidavit, dated 16-6-76 :

"Several other properties have also been acquired in the name of Maran which are of the value of Rs. 10,00,000/-".

ALLEGATION SERIAL NO. 7 :

From Shri M. G. Ramachandran's affidavit, dated 13-7-76, relating to installation of telephone :

Para 8 :

"(a)At the instance of Shri Karunanidhi an unlisted Telephone (No. 74511) under priority category was provided in the aforesaid house. Telephone itself is in the name of one "K. Anandam", possibly referring to Shri Karunanandam, about whom the few facts stated hereunder may be apposite."

"(b) Shri Karunanandam was a SORTER in Railway Mail Service. The said Shri Karunanandam resigned, presumably at the instance of Shri Karunanidhi. The said Shri Karunanandam is presently a Gazetted Official in the Tamil Nadu Government. The Telephone in the house bearing Door No. 9, 1st Cross Road, Madras-28 is in the name of "K. Anandam." Shri Karunanidhi used the Telephone in the house of Smt. Dharma and the Telephone itself is in the name of "K. Anandam." It is a fact Shri Karunanandam had been referred to as "K. Anandam" for purposes of telephone, and if that house was used in any manner whatever by the Chief Minister for administering Government affairs, the irresistible inference is that an elaborate attempt had been made to create a foil and veneer to cover up the most shady deals. Trunk Calls and Telephone Bills for the said Telephone 74511 will reveal the magnitude of the transactions covered by the use of Telephone No. 74511."

From para 3 of Shri Kalyanasundaram's affidavit, dated 16-6-76 :

"There is yet a third aspect which relate to abuse of his official position to appoint an unqualified person by name K. Anandam alias Karunanandam."

From para 9 of Shri Kalyanasundaram's affidavit, dated 16-6-76 :

"As a reward for their service to him the services of the two officers were extended by about 2 years after their age of superannuation."

From para 10 of Shri Kalyanasundaram's affidavit, dated 16-6-76 :

"A telephone bearing No. 74232 was installed at the said house. This phone connection was obtained on priority basis by abusing the office and position of the Chief Minister. The telephone itself was an obvious attempt to have the whole matter secretly installed in the name of one Karunanandam (a) K. Anandam. In the matter of obtaining necessary orders from the telephone department had been attended to by the Private Secretary to the Chief Minister namely Mr. Vaidyalingam. The State representative on the Advisory Board had also lent his services in obtaining priority for the installation of the phone."

Para 11 :

"11. Karunanandam (a) K. Anandam was working as a sorter in the Postal and Telegraph Department in the City of Madras. He was a D.M.K. partyman who used to write articles with D.M.K. slant. He has for some time been the ghost writer for Karunanidhi and in such transaction has developed close relations with him with a result that Karunanidhi has taken him one of his trusted confidence. He has lent his name for the telephone and thus been installed in his name. In token of his confidence in K. Anandam

Thiru Karunanidhi has thrown into winds all propriety in the matter of making public appointment and has appointed the said Karunanandam as Deputy Director of Publicity for Government of Tamil Nadu. The said Karunanandam is not qualified to be appointed as a Deputy Director."

Para 13 :

"13. Subramaniam, brother of Dharma is working as a Chowkidar in the services of the Central Government in its establishment of Fort St. George. Properties worth about Rs. 2 lakhs have been acquired in his name, namely a bungalow on 5 grounds of land in Plot No. C/697, Kodambakkam-Pudur."

ALLEGATION SERIAL NO. 14 :

From para 6 of Shri Kalyanasundaram's affidavit, dated 16-6-76 :

"The Sales Tax payable by the purchaser which is of the value of another five lakhs has not been collected intentionally."

ALLEGATION SERIAL NO. 17 :

From Shri M. G. Ramachandran's affidavit dated 13-7-76, from para 17: consequent to the concession made by Shri Harish Chandra, Counsel for the Central Government :—

"Shri Karunanidhi and Shri P. U. Shanmugham appointed mostly D.M.K. men as whole-sale dealers for lifting levy sugar from the Sugar Mills. The said D.M.K. men would not lift levy sugar from the Mills. An artificial slump was created for the Sugar Mills while an artificial scarcity was created for the consumer public. No action was taken against such whole-sale dealers or steps taken to appoint new dealers."

Sd. RANJIT SINGH SARKARIA,
Commission,
25—8—76.

These statements or extracts were found to be clearly irrelevant and beyond the scope of the terms of reference and the matters specified in the Notification. Therefore, they were ordered to be expunged from the record.

In the second category, fell those statement, the relevancy of which could not be conveniently determined at that preliminary stage. Statements in this category are set out in Schedule 'B' of my order dated 25-8-1976, and are reproduced below :

SCHEDULE 'B'

Statement in the affidavits left open to be decided at the time of final arguments :

ALLEGATION SERIAL NO. 5 :

Para 4 in Shri M. G. Ramachandran's affidavit relating to Property bearing Door Nos. 4/128 and 5/128, Mount Road, Madras—

"In the said premises bearing door Nos. 4/128 and 5/128 there stand a massive four storeyed R.C.C., concrete building with basement. The Ground Floor, the First Floor and Second Floor are rented to the State Bank of India for a monthly rent of Rs. 20,500/-. The State Bank of India have paid an advance of

RUPEES THREE LAKHS.

Rent was paid for the first floor also, notwithstanding it remained unoccupied. The value of the Building will be about Rs. 25 lakhs."

ALLEGATION SERIAL NO. 7 :

Para 4 in Shri M. G. Ramachandran's affidavit relating to House Property bearing Door No. 9, 1st Cross Road, Madras-28 :

"Extensive improvements and alterations have been made to the said house. The value of the house is more than Rs. 3 lakhs."

Para 3 in Shri Kalyanasundaram's affidavit, dated 16-6-76 :

"that properties worth several lakhs have been acquired by Thiru Karunanidhi by utilising his illgotten money."

Para 4 in Shri Kalyanasundaram's affidavit :

" The actual value of the property in 1969 would be more than one lakh. The property consists of land of an extent of about 2 Grounds the value whereof would be not less than Rs. 50,000/- at the rate of Rs. 25,000/- per ground. The value of the superstructure would be not less than Rs. 50,000/-"

ALLEGATION SERIAL NO. 17 :

Para 3 in Shri Kalyanasundaram's affidavit dated 16-6-76 :

" It was only a contrivance made by the producers in order to beat the levy sugar order. Whatever may be the reason the fact was that there was heavy accumulation of sugar in the factories. Whether this was due to the fall in demand or due to the contrivance of the producers is not the issue, which relates to the exploitation of the situation by Thiru M. Karunanidhi and his colleagues."

ALLEGATION SERIAL NO. 21 :

In Shri Kalyanasundaram's affidavit, para 3 :

" The trust has been created as a public trust to evade and avoid payment of taxes which may otherwise be due."

ALLEGATION SERIAL NO. 26 :

In Shri Kalyanasundaram's affidavit, paragraphs 1 and 2 :

" 1. The allegation is that Thiru Karunanidhi had staged a show of making a declaration of secession of Tamil Nadu from Indian Union, and that he had abused the Governmental machineries for providing facilities such as supply of electricity. Conferences were held in connection with the show of declaration of secession, free of charge."

" 2. At a district conference of the D.M.K. held at Madurai, the State Publicity Department openly participated and made propaganda for secession of Tamil Nadu. Photographs equating Karunanidhi with Mr. Mujibur Rehman, Bangla Desh Leader were exhibited profusely. The tone of the conference was Karunanidhi was the saviour of Tamil Nadu and that like Mr. Mujibur Rehman, he would secure independence for Tamil Nadu. No doubt, the open expression used was State Autonomy ; but none-the-less the purpose and intention was to incite the people against the Indian Union. The City of Madurai was converted into a single conference Hall by constructing arches across the roads and in every street corner and hoisting of paper flags across the roads all over the city. Neon lights were provided in huge numbers one at a distance of about 200 feet all around the city. Supply of electricity was taken from nearby electric posts. The whole city was lighted in an unimaginable manner and the consumption of electricity for about a week was very heavy. All these were arbitrarily done by Karunanidhi's party-men, without any regard to the rules and regulations. In fact, the entire administrative machinery of the Electricity Board was bent to serve the needs of the said conference. The Electricity Department and the D.M.K. got merged, as it were one. The Publicity Department and the Electricity Department were made to subserve the interests of the party."

ALLEGATION SERIAL NO. 27 :

In Shri Kalyanasundaram's affidavit, paras 3, 4, 5, 6, 7 and 8, namely :

" 3. Trade Union leaders like A. Srinivasan, K. M. Sundaram of A.I.T.U.C. and V.P. Chinthan of C.I.T.U. and R. Kuchelar of Working People's Council were critical of the attitude of the Tamil Nadu Government in respect of the worker's movement. They made no secret of their rightful indignation against the Government's abuse of the Police machinery in the matter of putting down the workers, so as to make them change their allegiance to the sponsored Peravai. The Police machinery was therefore directed against the Trade Union leaders who opposed this. At a meeting held in January 1972 at Avadi, a suburban town near the City of Madras, the above said four leaders addressed a gathering of workers in respect of certain demands of the workers of the Clothing Factory. The District Superintendent of Police, Chingleput, Mr. Ramadoss, made an unprovoked attack on the workers and disbursed the crowd without any lawful excuse. As a consequence of this, the meeting was called off and the leaders withdrew themselves into a house nearby. After lapse of about two hours, the four leaders mentioned above were dragged out and beaten mercilessly until they fell unconscious. They were

removed to the General Hospital and what was worse that a case under Section 307, I.P.C. was foisted against them. Thiru R. Kuchelar, who had suffered fractures in both the hands, was in the hospital for more than two weeks. The other leaders were hospitalised for not less than 4 days. Even though a F.I.R. was registered for offence under Section 307 I.P.C. no case was filed nor any proceedings taken. It was only an attempt at destroying the trade unions led by the said leaders that the Police were set up to mercilessly beat them."

- " 4. Thiru Madhavan has abused the Police machinery in pure self-interest in order to put down all opposition in his own native place. There is a private college by name Arumugham Pillai Seethiammal College in Tirupathur under the control of Thiru Madhavan. On 27-2-1972 the College celebrated its founder's day. The students had to boycott the function on account of the arrogant attitude taken by its Correspondent, A.R. Nagarajan. The function was to be attended by the then Minister Thiru Madhavan and a few others. As the students resorted to boycott, the Correspondent indulged in using violence against the students. Known rowdies were set up against the students and students were mercilessly beaten. The Police machinery was made to lend support to the unsocial elements engaged to assault the students. Thiru Madhavan personally intervened in the matter and used the Police against the students.
- " 5. Thiru Vedanarayagam with the help of a few supporters of the Communist Party of India had put up a thatched superstructure on a poramboke land in Singampuneri village in Ramnad District. Adjacent thereto a close relative of Thiru Madhavan had occupied a vast extent of poramboke land. Under the pretext that the land in the occupation of the supporters of the Communist Party was required for putting a public latrine, the thatched superstructure was removed by force with the help of the Police and the land was handed over to the D.M.K. partymen, which was later on annexed by the relatives of Thiru Madhavan. The library of the Communist Party was also attached. No public convenience was put up even till this date.
- " 6. In the Xavier's College, in Palayamkottai, Tirunelveli District, the students agitated in October, 1971 for the formation of a students union which was resisted by the College authorities. It was a private College. The agitation of the students spread to the other Colleges. The local D.M.K. leader Thiru Alagiyannambi with the help of unsocial elements took the law into his own hands and started terrorising the students by the use of criminal force. In October 1971, the Police entered into the hostel accompanied by unsocial elements and attacked the students with lathis. The unsocial elements used cycle-chains, sticks and other weapons in the attack. Several students were injured.
- " 7. In Karivalamvanthanallur in Tirunelveli District a Harijan died on or about 19-11-71 in Police lock-up. This has aroused the local people who demanded an enquiry into the death of the Harijan. The crowd that gathered on the day, would not be more than 200 in strength. Yet Police fired at the crowd and 2 persons died. No real judicial probe was ordered, but only a pretence of an enquiry was made by the Revenue Divisional Officer. The enquiry officer assumed a partisan attitude and hence no public was represented in the enquiry except the D.M.K. Partymen.
- " 8. The Police also resorted to firing at a helpless crowd of about 100 farmers, in Pethunaickenpalayam. The circumstances led to the firing were as follows :

In 1972, the Government sought to revise the power tariff for the supply of electricity for agricultural purposes by enhancing the rate from 9 paise to 12 paise per unit. The Revenue Department also resorted to distrain the farmer's properties for collecting the arrears of Kist and alleged arrears of agricultural loans. All the opposition parties in Tamil Nadu opposed both the moves mentioned above of the Government and after failing in their attempt to persuade the Government to rescind the proposed revision of power tariff, the opposition parties called for a General Hartal on 5-7-72. It was a response to the call of the all party committee that about 100 farmers of Pethunaicken Palayam had gathered near the main road, to demonstrate their support to the demands put up by the opposition parties. The D.M.K. partymen attempted to disturb the demonstrators and at their instance, the Police opened fire at the crowd of about 100 farmers and killed 9 of them injuring nearly 50 persons.

Objections with regard to these statements (in Schedule B) were left open with liberty to the parties to reagitate them at the time of final arguments.

In the third category fell those statements which were either elaboration of the principal matters under inquiry or otherwise contained relevant facts which indirectly or inferentially tend to make the existence or non-existence of the principal matter under inquiry probable. Matters comprised in these statements clearly arise from or are connected with or incidental to acts, omis-

sions or transactions referred to in the Annexure to Cl. (a) to paragraph (2) of the Notification. It was held that an inquiry into these matter falls fully within the scope of the terms of reference specified in the Notification. The petitioners' request for expunction of these statements was therefore declined.

I reserved orders on Misc. Petition No. 20/SCI/1976 filed by Shri Si. Pa. Aditanar relating to Allegation No. 23 and Petition No. 41/SCI/74 filed by Shri. M. Karunanidhi relating to Allegation No. 20. The hearing of Petition No. 49/SCI/74, filed by Shri M. Kalyanasundaram, was adjourned to the date of final arguments.

The Respondents were also directed that they should file their supplementary counter-affidavits not only in regard to the Allegations specified in the Central Government Notification dated February 3, 1976, but also in reply to the statements/affidavits received from the members of the public consequent to the notification published under rule 5 (2). They were also required to say what they had to say with regard to the statements and reports recorded pursuant to the orders of the Commission under s. 5-A by the investigating officers acting under the direction and control of the Commission, in respect of Allegations (Sl. Nos. 3, 11 (a), 11 (b), 12, 15, 16, 17, 19 and 22). Counsel for the parties had been duly informed about the receipt of these reports. They were also informed that they could inspect these reports and take thereof as full notes, as possible, with the assistance of their stenographers, steno-typists or with the aid of mechanical tape-recorder, at all convenient hours during working hours/days or in the office of Shri B. Vijayaraghavan, O.S.D. (Public), Madras. The Investigation Reports had been submitted in duplicate and one copy of these reports was made available for inspection at Madras and another at New Delhi. Respondents' request for immediate supply of copies of these reports could not be allowed, but it was ordered that, in future, each investigating report shall be accompanied by a spare copy to be delivered to the Respondents. It was also made clear to the Respondents that the omission to supply copies of the investigation reports should not be made an excuse for not deposing or saying as to what had been said in the investigation reports, statements/affidavits filed by various persons, including the affected persons, copies of which had been supplied to the Respondents already. At the request of Mr. G. Ramaswamy, Counsel for the Respondents, time granted to them for inspection of records was extended till September 10, 1976 and it was directed that inspection of records, except those relating to Allegation No. 10 (Veeranam Project), should be completed by that date.

On August 28, 1976, I passed orders rejecting Petition No. 20/SCI/76 filed by Si. Pa. Aditanar, subject, however, to deletion of two portions from paragraph 2 of the affidavit of Shri M. Kalyanasundaram and leaving the objection in regard to another portion of the same paragraph open with liberty to the petitioner to raise it again at the time of final hearing.

I also passed orders on Misc. Petition No. 41/SCI/76 directing that Allegations in paragraphs 1, 3, 4, 7 and 9 of the affidavit, dated June 16, 1976, of Shri M. Kalyanasundaram with regard to Allegation 20 (Kodaikanal-Palani Road) be expunged from the record. They were irrelevant and tried to introduce a new charge beyond the scope of the terms of reference specified in Government Notification, dated 3-2-1976. The detailed reasons in respect of that order are given in my order, dated August 28, 1976, (Appendix IV).

CHAPTER VI

FURTHER PROCEEDINGS UNDER RULE 5 (5)

Receipt of Investigation Reports and Notice to "parties" to inspect them.---

At the sitting of the Commission held on August 2, 1976, I had while explaining the scope of Regulations 14 and 15 devised by the Commission, observed that the proper stage for considering any application if made for oral examination of witnesses, would be after the receipt of investigation reports and the filing of complete supplementary counter-affidavits by the Respondents.

The investigating teams were required to submit their reports by the 15th of July, 1976, but subsequently, this period was extended at the request of the officers heading the team.

Shri Rajagopalan of the C.B.I. team, submitted reports of the investigations conducted by his team with regard to Allegations : 3 (Misuse of Tractor), 11 (b) (Aerial Spraying), 12 (S. Kandappan), 15 (Globe Theatre), 16 (Broadway Times), 17 (Sugar Scandal), 19 (A.L. Srinivasan) and 22 (Anbil Dharmalingam). Shri Ganesan, Superintendent of Police, heading the team of the State Investigating Agency, submitted the investigation report pertaining to Allegation 11 (a) (Nathan Publications).

Notice of each of these investigation reports as and when it was received, was served on Shri M. Karunanidhi and his erstwhile colleagues in order to enable them to inspect the same. A general order was made that the Respondents could not only inspect, but also take verbatim

notes of these investigation reports/records, with the aid of their own stenographers or even with the aid of a tape-recorder. They fully availed of this facility, and by the 4th of September, 1976 they had completed the inspection and prepared verbatim copies of these investigation reports.

Thereafter, no less than four sittings of the Commission were held on 3rd August, 1976, 23rd, 24th and 25th August, 1976. At these sittings, the Respondents, despite repeated directions, did not file their complete counter-affidavits.

The 10th sitting of the Commission was fixed for 11th September, 1976. In the light of past experience, I apprehended that even on the 11th September, 1976, the respondents might not file their complete supplementary counter-affidavits with a view to impede the further progress of the proceedings. In order to obviate this, on 4th September, 1976, I made this order :

“ Notice be given to the parties and all concerned that on the 11th September, 1976 the Commission shall proceed further in accordance with Rule 5 (5) of the Commissions of Inquiry (Central) Rules, 1972, and also take steps to satisfy itself about the correctness of the records/reports of the investigating officers/agencies working under the direction and control of the Commission under s. 5-A of the Act, in respect of Allegations 3, 11(a), 11 (b), 12, 15, 16, 17, 19 and 22. The parties must therefore submit lists of their witnesses, if any, whom they would like to be called for oral examination. Such lists must reach the office of the Commission *before* the 11th September, 1976.”

Accordingly, notices were issued on the same day to the Respondents and the other “parties” and served on them, well before the date fixed for filing the lists. In spite of this explicit notice served on the Respondents, they neither filed the supplementary affidavits, as directed, nor submitted lists of their witnesses by the 10th September, 1976. The Central Government and the Memorialists also did not file any lists of their witnesses within the time specified. In the meanwhile, I had carefully scrutinised all the statements/affidavits received in response to the notices/ notification under rule 5 (2) and the investigation reports received with regard to Allegations 3, 11 (a), 11 (b), 12, 15, 16, 17, 19 and 22, which scrutiny was made by me in chambers.

The investigating officers have reported that there is not sufficient evidence even for a *prima facie* case in respect of Allegations 3 and 22. With regard to the other seven Allegations, the investigating officers have recorded the statements of a large number of witnesses as shown in the table below :—

<i>No. of Allegation</i>	<i>No. of witnesses examined</i>
11 (a)	46
11 (b)	26
12	32
15	44
16	14
17	129
19	13

The 10th sitting of the Commission, as scheduled, was held on the 11th September, 1976, at New Delhi. Shri Shanti Bhushan, Counsel for the Respondents (except Shri Si. Pa. Aditanar) submitted that the further proceedings of the Commission be adjourned and further time be granted to them for furnishing their supplementary affidavits in respect of Allegation 11 (b) (Aerial Spraying) and Allegation 17 (Sugar Scandal).

Counsel added that on the following day, the Respondents would be filing a petition objecting to the validity of the record prepared by the investigating officers, and that before proceeding further with the inquiry, I should decide those objections. He requested for extension of time by two weeks for filing further affidavits by the Respondents. It was indicated that in the objection-petition to be filed, the Respondents would raise the objection that by making an order under s. 5-A, I had entirely delegated my functions to the investigating agencies of the Centre and the State which was not permissible under s. 5-A. Under this provision, maintained the Counsel, assistance of investigating officers for investigating technical matters concerned in any of the Allegations, such as, appointment of an auditor for checking accounts etc., could validly be taken, but the order made by the Commission, in effect, constitutes the investigating agencies of the Government as a sub-Commission for performing functions which could be performed only by the Commission, itself.

Oral examination of witnesses.—

As regards summoning of witnesses for oral examination, Shri Bhushan contended that the Commission should call all the persons for oral examination who have filed statements/affidavits before the Commission or have made statements before the investigating officers. He stated that evidence of those persons which was based on undisputed documentary evidence could be taken on affidavits. Counsel, however, did not say as to which witnesses in his opinion would fall in this category. He commended the procedure adopted by the Ayyangar Commission which inquired into certain allegations against Bakshi Ghulam Mohammad, the former Chief Minister of Jammu & Kashmir.

Learned Additional Solicitor-General stoutly opposed the contentions advanced by Shri Bhushan. He commended the procedure adopted by the Das Commission which inquired into certain allegations against Sardar Pratap Singh Kairon and the Khanna Commission which inquired into certain charges against former Ministers of Orissa. These Commissions had taken evidence entirely on affidavits and counter-affidavits and did not orally examine a single witness. Shri Raman explained that the object of the Commission is fact-finding and the Respondents are not in the position of accused persons and therefore the analogy of the Cr. P.C. is wholly inapt. He further submitted that s. 5-A was introduced in December 1971 and the Commissions which were constituted before the insertion of s. 5-A, did not have the advantage before the insertion of s. 5-A; did not have the advantage of the facility provided therein. He stressed that the investigating officers assisting the Commission had been working under its control and direction and the statements recorded by them stood on the same footing as the statements recorded by the Commission, itself. In this connection, the Additional Solicitor-General, referred to sub-s. (3) of s. 5-A which for the purpose of the immunity available under s. 6, treats the statements recorded by the investigating officers at par with the statements recorded by the Commission. Counsel further pointed out that the Respondents had been seeking extensions of time, again and again, for filing their affidavits or additional affidavits or supplementary affidavits and their procrastinating conduct disentitles them to any further indulgence by the Commission. Shri Raman warned that if the Commission started recording evidence of the witnesses which may be cited by the parties, it would land itself in interminable proceedings which may not see their end even for two years or more. The object of the Commission, emphasised the Counsel, in that event would be frustrated. He stressed that if the Commission had to finish its task with utmost despatch and expedition and within the time stipulated in the Government Notification, it could do so only if the evidence was taken on affidavits or counter-affidavits.

I declined to express any final opinion on the objection orally raised in embryonic form as to the validity of the investigation reports, for the reason, that it was not possible to express any final opinion on mere hypothetical basis. Nor the Commission could predicate what precise objections or ground would be taken in the objection-petition intended to be filed on the following day or thereafter by the Respondents. I further noted that in spite of the fact that the Respondents were fully aware of the appointments of the investigating officers which were intimated to them at the very first sitting of the Commission held on May 14, 1976, no objection had ever been taken by them with regard to that matter before that date.

Tentative list of witnesses to be orally examined.—

When Shri Shanti Bhushan was almost at the fag end of his reply to the arguments of Shri Raman, I pointed out that neither party had, in compliance with the Commission's order, dated 4-9-1976, communicated to them by a notice of the same date, filed a list of their witnesses. At the same time I read out the names of 17 witnesses, six with regard to Aerial Spraying (Allegation 11 (b), and eleven pertaining to Allegation 17 (Sugar Scandal) which I had already noted on a piece of paper and announced that those witnesses would be called for oral examination, apart from the three investigating officers viz., Shri K. A. Rajagopalan, Shri Narasimhan and Shri Ramalingam. It was further announced that the examination of the first batch of witnesses mentioned in Schedule 'A' of my order, dated 11-9-1976, relating to Aerial Spraying would start on the 20th September, 1976, at Madras and take place, as far as may be, in the order and on the dates indicated therein. It was further made clear that the time-schedule was tentative and was liable to adjustment according to the exigencies of the situation. The examination of the second batch mentioned in Schedule 'B' would be taken up, according to the programme to be notified in due course. Almost simultaneously with my announcement of the names of 20 witnesses, Shri Ramaswamy, Counsel for the Respondents placed before me a list of about 200 witnesses, most of whom had already submitted their affidavits/statements to the Commission or whose statements had been recorded by the investigating officers assisting the Commission. There was an omnibus prayer in this list, as subsequently elaborated, that apart from these two named persons, all those who may be examined by the investigating officers purporting to act under s. 5-A, should also be summoned for oral examination. On the basis of incomplete information then available, it was thought that the number of such persons would exceed 300. Information gathered subsequently, however shows that their number would exceed 760. Shri Palpandian, Counsel for Shri M. Kalyanasundaram, also, submitted a list of about 25 witnesses whom the Memorialists wanted to be called for oral examination. This order was orally announced. Inci-

dentally, the 17 witnesses directed to be summoned for oral examination by me were those who prominently figure in the list of witnesses submitted by the Respondents. To that extent, the demand of the Respondents stood immediately, albeit incidentally, conceded. Consideration of summoning the remaining witnesses in the list furnished by the parties was deferred till after the examination of the witnesses ordered to be summoned in the first instance. The substance of the order was announced orally at the sitting in the presence of the Counsel for the parties. The detailed order was immediately dictated after the sitting and a copy of the same, according to the practice of the Commission, was handed over to the Counsel for the Respondents on September 13, 1976, the 12th September being a Sunday. (Appendix V).

On the 14th September, 1976, Shri G. Ramaswamy, Counsel for the Respondents presented three petitions before the Commission in chambers at New Delhi. In the first petition (No. 53/SCI/76), a prayer was made for extension of time for further inspection of some important files till the 20th of September, 1976. This prayer was granted immediately by me without even notice to the other side.

Relief in the second petition (No. 54/SCI/76) sought was that "the investigation reports and the statements recorded by the investigating officers be taken off the record and the Commission decide the matter without any reference to them."

In the third Petition (No. 55/SCI/76), the Respondents prayed for five reliefs :

- (i) The witnesses mentioned by the Respondents in their list, dated 11-9-1976, may be examined.
- (ii) in any event, before taking up each charge, pass orders deciding all the witnesses to be examined under each charge.
- (iii) directing the examination of the investigating officers be postponed after the examination of the other witnesses.
- (iv) settle the issues framing the points for determination and the points on which evidence has to be taken before taking up the examination of witnesses on the 20th and
- (v) adjourn the enquiry which has been fixed for 20th to some other convenient date.

Shri Ramaswamy insisted that Petitions 54 and 55/SCI/76 be fixed for hearing as the first item on the agenda on the 20th September, 1976. This request was also granted in view of the undertaking given by the Counsel that their arguments on these petitions were not likely to take more than one hour. It was further ordered that certain readjustment in the time-schedule regarding examination of witnesses mentioned in Schedule 'A' to my order dated 11-9-1976, consequent upon the petitions moved by the Respondents, be made.

I further directed that since serious and general allegations have been made against the investigating officers in Petition No. 54 and 55/SCI/76, filed by the Respondents, notice be issued to them to furnish particulars of those allegations and support the same by filing a proper affidavit. It was further directed that such an affidavit should be sworn and properly verified in accordance with the Regulations framed by the Commission and filed before Petitions 54 and 55 are actually taken up for hearing on the 20th September, 1976.

CHAPTER VII

CIRCUMSTANCES LEADING TO WITHDRAWAL BY RESPONDENTS (EXCEPT SHRI SI. PA. ADITANAR) FROM THE PROCEEDINGS.

The 11th sitting of the Commission was held at "KANCHI" Madras on September 20, 1976. At first, the hearing of Misc. Petitions 54 and 55/SCI/76 was taken up. I heard the arguments of Sarva Shri Shanti Bhushan, Govind Swaminathan and Venugopal, Counsel for the Respondents. I announced four short orders.

Prayers (i) and (ii) quoted above from Petition No. 55/SCI/76 were, in substance, a repetition of the same request which was orally made at the hearing on the 11th September, 1976, and then disposed of by me as per my order of that date. Again, the thrust of the arguments advanced by the learned Counsel for the Respondents, was that all those witnesses, whatever their number, who were named or were otherwise indicated in the omnibus prayer in the list submitted by the Respondents on 11-9-1976 and elaborated on 13-9-1976, be summoned for oral examination before the Commission. Information received subsequently revealed that the total number of such witnesses in respect of all the Allegations would have been well over 760. Counsel for the Res-

pondents, however, insisted that they were entitled to have all these persons summoned for cross-examination before the Commission, as a matter of right. It was reiterated that the Commission of Inquiry Act, 1952, and the rules framed thereunder contemplate that the Commission shall ordinarily record evidence by oral examination of witnesses, and taking evidence on affidavits is an exception. It was maintained that the Legislative intent which could be inferred from the scheme and the language of the statutory provisions is that recourse to s. 4 (c) should be taken only if the evidence of the witnesses concerned was purely formal based on official records or undisputed documentary evidence. In this connection reference was made to sub-rr. (2) and (5) of rule 5 of the 1972 Central Rules framed under the Act. Sub-rule (5) provides that the Commission shall examine all the statements furnished to it under cl. (b) of sub-rule (2), and after such examination, if the commission considers it necessary to record evidence, it shall record evidence, if any, produced by the Central Government and may thereafter record evidence of others. Stress was laid on the expression "record evidence" in sub-r. (5) of rule 5 and s. 8-C of the Act. It was argued that rule 5 (2) should be read together with s. 4 (c) and s. 8 of the Act, and thus read, these statutory provisions give a general right of cross-examination to a party adversely affected by a statement submitted to the Commission, whether on affidavits or otherwise. It was contended that the provisions contained in s. 8-C and rule 5 were introduced in 1971 and 1972 and, as such, none of the earlier precedents and judgments of the Supreme Court would apply.

This contention was negated by me. It was not correct to say that before December 1971, no statutory provision analogous to s. 8-C and s. 8-B existed. Such a provision did exist in Rules 4 and 5 of the Central Commissions of Inquiry Procedure Rules, 1960. These Rules read as follows :

"4. Persons likely to be prejudicially affected to be heard.—If at any stage of the inquiry, the Commission—

(a) considers it necessary to inquire into the conduct of any persons or

(b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry :

the Commission shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence.

5. Right of cross-examination and representation by legal practitioner.—The Central Government, every person referred to in Rule 4 and with the permission of the Commission any other person whose evidence is recorded under rule 3—

(a) may cross-examine a witness other than a witness produced by it or him ;

(b) may address the court ; and

(c) may be represented before the Commission by a legal practitioner or, with the consent of the Commission, by any other person."

It will be seen that what was provided in Rules 4 and 5 of the 1960 Rules is substantially the same which has been introduced as Sections 8-B and 8-C in the parent Act by amending Act 79 of 1971 which received the assent of the President on December 30, 1971, and was published in the Government of India Gazette, dated December 31, 1971. This being the position, the judgment of the Supreme Court in *State of Jammu & Kashmir v. Bakshi Ghulam Mohammad* (1966) Supp. SCR 401 will furnish a complete answer to this contention.

In *Bakshi Ghulam Mohammad's case* (supra), by a Notification dated January 30, 1965, issued under s. 3 of J & K Commissions of Inquiry Act (32 of 1962), Mr. Justice N. Rajagopala Ayyangar was appointed as one-man Commission of Inquiry to inquire into—(i) the nature and extent of the assets and pecuniary resources of Bakshi Ghulam Mohammad and the members of his family and other relatives mentioned in the First Schedule to the Order, in October, 1947 and October 1963, and (ii) whether during this period Bakshi Ghulam Mohammad and the others mentioned in the Schedule, had obtained any assets and pecuniary resources or advantages by Bakshi Ghulam Mohammad abusing the official positions held by him or by the aforesaid people set out in the First Schedule by exploiting that position his knowledge, consent and connivance.

Ayyangar Commission held certain sittings between February 1965 and August 1965 in which Bakshi Ghulam Mohammad took part. The Commission first called upon the Government to file affidavits and to produce documents which supported them. It then asked Bakshi Ghulam Mohammad to file his affidavits in answer. Thereafter, the Commission decided that there was a *prima facie* case Bakshi Ghulam Mohammad had to meet in respect of a group of allegations which the Commission decided to take up first. In connection with that group of

cases, Bakshi Ghulam Mohammad filed a petition that all the persons who had filed affidavits supporting the Government allegations be called for oral examination. The Commission ordered that it would not give permission to cross-examine all the deponents of affidavits but *would decide each case separately*. Thereupon, Bakshi Ghulam Mohammad on September 1, 1965, moved the High Court of Jammu & Kashmir under ss. 103 and 104 of the Constitution of Jammu & Kashmir (which correspond to Articles 226 and 227 of the Indian Constitution), for a writ striking down the notification and quashing the proceedings of the Commission. The High Court allowed the petition. The State appealed to the Supreme Court. One of the contentions of Bakshi Ghulam Mohammad which was accepted by the High Court, was, that the writ-petitioner had a right of cross-examination and the Commission by refusing to call all the witnesses relating to the group of charges in question, for oral examination, had deprived him of this valuable right of cross-examination. This claim was reiterated before the Supreme Court and was first based on the rules of natural justice. It was said that these rules requiring that a person adversely affected by the inquiries should have been given a right to cross-examine all those persons who had sworn affidavits supporting the allegations against him. Sarkar C. J. speaking for the Supreme Court, repelled these contentions and elucidated the law on the point, thus :

“We are not aware of any such rule of natural justice. No authority has been cited in support of it. Our attention was drawn to *Meenglas Tea Estate v. Their workmen.*, but there all that was said was that when evidence is given viva voce against a person he must have the opportunity to hear it and to put the witnesses questions in cross-examination. That is not our case. Further-more, in *Meenglass Tea Estate*, the Court was not dealing with a fact-finding body as we are. Rules of natural Justice require that a party against whom an allegation is being inquired into should be given a hearing. Bakshi Ghulam Mohammad was certainly given that. It was said that the right to the hearing included a right to cross-examine. We are unable to agree that that is so. The right must depend upon the circumstances of each case and must also depend upon the statute under which the allegations are being inquired into. This Court had held in *Nagendra Nath Bora v. Commissioner of Hills Division* that “the rules of natural justice vary with the varying constitution of statutory bodies and the rules prescribed by the Act under which they function and the question whether or not any rules of natural justice had been contravened should be decided not under any pre-conceived notions but in the light of the statutory rules and provisions.” “We have to remember that we are dealing with a statute which permits a Commission of Inquiry to be set up for fact-finding purposes. The report of the Commission has no force proprio vigore. This aspect of the matter is important in deciding the rules of natural justice reasonably applicable in the proceedings of the Commissions of Inquiry under the Act. Then we find that s. 10 to which we have earlier referred, gives a right to be heard but only a restricted right of cross-examination. The latter right is confined only to the witnesses called to depose against the person demanding the right. So the Act did not contemplate a right of hearing to include a right to cross-examine. It will be natural to think that the statute did not intend that in other cases a party appearing before the Commission should have any further right of cross-examination. We, therefore, think that no case has been made out by Bakshi Ghulam Mohammad that the rules of natural justice require that he should have a right to cross-examine all the persons who had sworn affidavits supporting the allegations made against him.”

I made it clear at the hearing, that legal position apart I would be examining orally all the crucial witnesses, and that the order for oral examination of the 17 witnesses in the first two batches was a big step towards acceptance of what was reasonable in their demand. To enable the Respondents to concentrate on the cross-examination of the witnesses in the first batch whose evidence was to commence that day, I announced that for the time being the inquiry would be limited to Allegation 11 (b) “Aerial Spraying”. I also gave sufficient indication that after the examination of the six witnesses in the first batch, I would be summoning more witnesses in respect of Allegation 11 (b). I further made it plain that their request for summoning the remaining witnesses indicated in their list, was not rejected, but will be considered after the examination of the witnesses already summoned. In deference to Shri Swaminathan’s argument, devoid of force though it was, that sufficient time had not been granted to enable them to collect material and prepare for cross-examination, I indicated that reasonable adjustment in the time schedule fixed for examination of witnesses was possible but not postponement of their examination for a month or so, as desired by the Counsel. When these assurances, indications and gestures of reasonable accommodation appeared to be of no avail, I announced that prayers (i) and (ii) contained in Miscellaneous Petition No. 55 of 1976 were rejected as being manifestly unreasonable. Prayer No. (iii) for postponing the examination of the Investigating Officers was conceded and it was directed that the examination of the Investigating Officers in respect of Allegation 11 (b) be postponed to a date after the 12th October, 1976. Prayers (iv) and (v) were also declined. I also announced that detailed orders dealing fully with the arguments canvassed by the Respondents would be prepared later and communicated to the parties concerned. While announcing the short orders, I again explained to the Counsel for the Respondents, that the six witnesses summoned in the first batch, constitute the back-bone of the charge in Allegation 11 (b) and if

they break in cross-examination, the whole charge would snap. This being the case, I impressed upon the Counsel to avail of the opportunity of cross-examining the witnesses whose evidence was going to commence shortly. Shri Govinda Swaminathan, however, expressed his inability to do unless the examination of these witnesses was postponed for more than a month.

At this stage, Counsel for the Respondents (except Shri Si. Pa. Aditanar) informed me that they had strict instructions from their clients that if any one of the five prayers contained in Misc. Petition No. 55 was not allowed, they should not participate further in the proceedings before the Commission. With these words, Shri Govind Swaminathan expressed his regrets to the Commission and withdrew from the proceedings along with 29 other Counsel appearing on behalf of the Respondents.

CHAPTER VIII

EVIDENCE AND ARGUMENTS

Shri G. Krishnan, Counsel for Shri V. Rajagopal, who was an 'affected' person and to whom a notice under rule 5 (2) (a) had been issued, moved a petition requesting that his (Rajagopal's) right to call and cross-examine any person for and on whose behalf he was likely to be cross-examined, should be ensured. I ordered that notice of this petition be served on Shri M. Karunanidhi and Shri Anbil Dharmalingam so that they could appear in person or through their Counsel or otherwise avail of the opportunity of being heard in opposition to this petition. I also directed that they should be further informed that subject to the orders that might be passed on Shri Rajagopal's petition, his examination-in-chief which would commence, would continue on the following day and the Respondents could avail of their right to cross-examine him either on the following day or on the next day thereafter. I also directed that the Respondents should be informed that after the conclusion of Rajagopal's evidence, the examination of R.H. Captain, K. N. A. Krishnan and S. A. Ramachandran would be taken up and the Respondents, if they so desired, could avail of the opportunity to cross-examine them. Thereafter, I commenced the examination of Shri V. Rajagopal, whose evidence was type-recorded with the aid of an interpreter, in English. His evidence continued to be recorded till 5-00 p.m. when I rose for the day.

The 12th sitting of the Commission was held at Madras on 21st September, 1976. Recording of the oral evidence of V. Rajagopal was resumed. His evidence had not concluded when I rose for the day at 5-00 p.m.

The 13th sitting of the Commission was held at Madras on the 22nd September, 1976. The evidence of V. Rajagopal, CW-1, was concluded and thereafter, I commenced recording the evidence of R. H. Captain, CW-2. His evidence had not concluded when I rose for the day.

The 14th sitting of the Commission was held at Madras on the 23rd September, 1976. The evidence of R. H. Captain, CW-2, was concluded and thereafter, the evidence of K. N. A. Krishnan, CW-3, was taken up, but had not concluded till 5-00 p.m. when I rose for the day. Earlier, after perusing the counter-affidavits filed by Shri M. Karunanidhi and Shri Anbil Dharmalingam, on 20-9-1976, and the recorded evidence of Rajagopal and Captain, I directed that in the interest of justice, it was appropriate to call for oral examination three more witnesses who had filed their affidavits with regard to Allegation No. 11 (b) (Aerial Spraying), namely, Sarva Shri M. Vaithialingam, P. N. Vedanarayanan and N. Hari Bhaskar. I ordered that Sarva Shri Vaithialingam and Vedanarayanan be summoned for oral examination on 27th and 28th September, 1976, at Madras and Hari Bhaskar be summoned for the 5th October, 1976 at New Delhi. I also ordered that notices be issued to the Respondents to appear through Counsel or otherwise and exercise their right to cross-examine these witnesses. It was added that even if they were not desirous of cross-examining the witnesses by appearing before the Commission in person or through Counsel, they could, in accordance with Regulation 16 devised by me, cross-examine these witnesses through interrogatories which should reach the Commission before the dates fixed for the examination of the said witnesses.

The 15th sitting of the Commission was held at Madras on the 24th September, 1976. The evidence of K. N. A. Krishnan, CW-3, was concluded and thereafter, the examination of S. A. Ramachandran, CW-4, was commenced but could not be concluded when I rose for the day at 5-00 p.m.

The 16th sitting of the Commission was held at Madras on the 25th September, 1976. Recording of the evidence of S. A. Ramachandran was continued and concluded. Thereafter, the evidence of H. P. Rao was recorded and concluded.

The 17th sitting of the Commission was held at Madras on the 27th September, 1976. The evidence of M. Vaithialingam CW-6, was recorded and concluded.

The 18th sitting of the Commission was held at Madras on the 28th September, 1976. The evidence of Shri P. N. Vedanarayanan, CW-7, was recorded and concluded. I announced that the further sitting of the Commission would be held at New Delhi on the 4th of October, 1976 for recording the evidence of R. S. Cambata and thereafter, on the following day, the evidence of Shri Hari Bhaskar would be recorded.

On 2nd October, 1976 I ordered that the evidence of 26 persons who had been examined by the Investigating Officers assisting the Commission be taken on affidavits and these persons directed to furnish their affidavits, duly sworn and verified, in regard to all the facts within their knowledge pertaining to Allegation No. 11 (a) "Nathan Publications" by the 12th October, 1976. These persons were also, specifically directed to state in their affidavits about the correctness or otherwise of the allegations made by the Respondents namely, that their statements had been procured or extorted by use of unfair means, such as coercion, threat, promise or tutoring and they were forced to sign ready-made statements by the Investigating Officers. I also directed that copies of such affidavits on receipt, be made available to the Respondents, who might if they so desired, file their affidavits in opposition and also of their witnesses by the 23rd October, 1976.

The 19th sitting of the Commission was held at New Delhi on the 4th October, 1976. The examination of R. S. Cambata, CW-8, commenced but could not be concluded till 5-00 p.m. when I rose for the day.

The 20th sitting of the Commission was held at New Delhi on the 5th October, 1976. The examination of R. S. Cambata was continued and concluded. Thereafter, the evidence of N. Hari Bhaskar, CW-9, commenced but could not be concluded till 5-00 p.m. when I rose for the day.

The 21st sitting of the Commission was held at New Delhi on the 6th October, 1976. The evidence of Hari Bhaskar, CW-9, was continued to be recorded and concluded. Thereafter, I announced that the evidence of M. D. Paul with regard to Allegation No. 11 (a) "Nathan Publications" would be taken on 12th October, 1976 at New Delhi.

On 6th October, 1976 I also decided to take evidence on affidavits, as far as may be possible, of all witnesses examined by the Investigating Officers assisting the Commission in respect of Allegation 12, 16, 17 and 19, who had not already filed their affidavits before me. I ordered that notices should be issued to 82 witnesses to file their statements on affidavit by 26-10-1976. I further directed that a copy of this order be sent to the Respondents, Sarva Shri M. Karunanidhi, P.U. Shanmugham and S. Madhavan for information, who might, if they so desired, file their affidavits in opposition and also of their witnesses with regard to what these witnesses might have to say, by the 5th November, 1976. Copies of the statements on affidavits, when filed, were to be given to the Respondents on request.

By another order of the same date, i.e., 6th October, 1976, I directed that the 2 Investigating Officers summoned for oral examination with regard to Allegations 11 (a) and 11 (b) be examined at New Delhi on the 14th October, 1976. I further directed that the affidavits of all other officers of the investigating teams whose assistance was taken regarding Allegation 11 (b), should be produced on that date. It was noted that although copies of the 18 affidavits received in respect of Allegation 11(b), in pursuance of my order dated 20th September, 1976, had been sent to the Respondents to enable them to file further affidavits in opposition, they had neither filed any affidavits in opposition, nor any affidavits of their witnesses. After the expiry of the time granted to the Respondents for filing their affidavits-in-opposition in respect of Allegation 11 (b) i.e., after the 12th October, 1976, the case was ripe for final arguments, for which a date was directed to be fixed after the 14th October, 1976.

By my order dated 9th October, 1976, I extended the time for filing affidavits-in-opposition by the Respondents or their witnesses upto 18th October, 1976, and also fixed 19th October, 1976 for hearing final arguments in respect of Allegation No. 11 (b), at New Delhi.

The 22nd sitting of the Commission was held at New Delhi on 12th October, 1976 when I recorded the oral evidence of M. D. Paul, CW-10, in relation to Allegation No. 11 (a) "Nathan Publications." His evidence was concluded at 1-00 p.m.

The 23rd sitting of the Commission was held at New Delhi on 14th October, 1976. I recorded the oral evidence of Shri K. A. Rajagopalan, Investigating Officer, in respect of Allegation No. 11 (b) "Aerial Spraying" and Shri K. Ramalingam, Investigating Officer in respect of Allegation No. 11 (a) "Nathan Publications" and also Shri G. Ganesan, Superintendent of Police, in respect of the latter allegation. The evidence was concluded the same forenoon.

I also ordered that a notice should go to Shri R. P. Kapur, Deputy Superintendent of Police, C.B.I., who was one of the persons whose statements were recorded by the Investigating Officers assisting the Commission with regard to Allegation No. 11 (b), directing him to file his affidavit

complete in all respects, with regard to all the relevant facts within his knowledge concerning this allegation. A copy of Shri Kapur's affidavit, when received, was to be immediately sent to the Respondents who could, if they so desired, file a counter-affidavit by the 25th October, 1976. The final arguments with regard to this Allegation, tentatively fixed for 19th October, 1976 were accordingly postponed to 26th October, 1976 at New Delhi.

On 14th October, 1976 I passed a detailed order giving reasons in support of my short order pronounced on 20th September, 1976 on Misc. Petition No. 55/SCI/76. A copy of this order may be seen at Appendix VI of this report. In this order, apart from considering in detail the points taken by the Respondents in Misc. Petition No. 55/SCI/76 as well as in the unsworn "affidavit" filed by Shri M. Karunanidhi on 20th September, 1976 at Madras, I had reviewed all that had happened during the past 4½ months, including various orders passed by me disposing of objections, granting concessions, extending time for filing counter-affidavits or for inspection of records by the Respondents, etc. I then made the following observations :—

"After reviewing in my mind all that has happened in or before this Commission during the past 4½ months, including the various orders passed by me disposing of objections, granting concessions, extensions of time for filing counter-affidavits or for inspection of records by the Respondents, I am inclined to think, with regret, that the Respondents intimation not to participate further in the proceedings of the Commission, is not actuated by the grounds ostensibly set out in their petition or canvassed at the bar, but is motivated by extraneous considerations. Even so, the Respondents have a right —and indeed such a step would always be welcome — to come back and participate in the further proceedings before the Commission to vindicate the truth. In that hope, notice of the dates of the further hearings and the agenda fixed therefor, will go to all the parties by publication in newspapers or otherwise."

On 16-10-1976, I ordered that 11 witnesses relating to Allegation No. 17 (Sugar Scandal) be summoned for oral examination at Madras on various dates commencing from 1st November, 1976. On 21st October, 1976, I further ordered issue of summons to Shri V. R. Sivaramasubramaniam, who was the most material witness with regard to Allegation No. 15 (New Globe Theatre) directing him to appear for evidence on 6th November, 1976, at Madras. I further directed that all persons whose statements were recorded by the Investigating Officers in respect of this Allegation and who had not filed their affidavits, should also be called upon to file their affidavits with regard to the relevant facts concerning this Allegation within their knowledge, by 4th November, 1976 and thereafter, the Respondents shall have an opportunity to file their affidavits in opposition by the 12th November, 1976.

The 24th to 26th sittings of the Commission were held at New Delhi from the 26th to 28th October, when I heard arguments in respect of Allegations 11 (b) "Aerial Spraying" and 11 (a) "Nathan Publications."

The 27th to 33rd sittings of the Commission were held at Madras between the 1st November, 1976 and 8th November, 1976. Twelve witnesses in respect of Allegation No. 17 (Sugar Scandal) and one witness in respect of Allegation No. 15 (New Globe Theatre) were examined during these sittings. I also passed an order on 1st November, 1976 directing Shri Maruthai Pillai, who was the most important witness with regard to Allegation No. 17, to reply on affidavit by 5th November, 1976 to the points taken by Shri P. U. Shanmugham, Respondent in his counter-affidavit, dated 19th September, 1976, in respect of the above Allegation.

The 34th and 35th sittings of the Commission were held at New Delhi on the 15th and 16th November, 1976. I heard arguments on Allegations 3, 12, 15, 16 and 19. While arguments with regard to Allegation No. 15 were still in progress, I considered it necessary to examine, Shri Bashir Ahmed and Shri Nagamiah, who also were crucial witnesses in respect of this Allegation. They were directed to be summoned for oral evidence and further arguments in respect of this Allegation were postponed till after the recording of their depositions. Arguments were then heard on Allegation No. 22, and at the request of Shri Vanamamalai, it was directed that Sarva Shri Raja Mohan, D.I.G., J. Ramakrishnan, Inspector of Police and P. K. Jamal Mohammad, former Public Prosecutor, be summoned to appear for oral examination with regard to this Allegation and further arguments would be heard after their depositions were recorded.

Scope, Construction and Invocation of s. 5-A and evidential use of the Investigation Reports thereunder

In my detailed order dismissing the objections raised as per Petition 54/SCI/76 against the admissibility of the Investigation Reports, "I explained the scope, construction and invocation of s. 5-A and use to which such Reports can be put. It will be useful to summarise the main points discussed in that order as follows :

"The genesis of the facility, which has received statutory recognition in Section 5-A, is to be found in the practice of the Tribunals set up from time to time, under the English Act, to have a preliminary investigation made by the Treasury Solicitor, before commencing the inquiry proper." If the matter to be inquired was short, simple and straight, it presented no difficulty and the Tribunal could commence the inquiry straightaway. But if the matter was immense, intricate and complex, the Tribunal invariably got a preliminary investigation made, under its direction and control, by the Treasury Solicitor.

Although, in England, there is no statutory provision analogous to Section 5-A, the Treasury Solicitor with a permanent staff works under the direction and control of the Tribunals constituted under the English Act. The Treasury Solicitor and his staff are permanent civil servants. The Solicitor is supposed to have abundant experience of public administration and sound knowledge of how Government machinery normally functions. Among his staff are Police Officers, experienced and skilled in the investigation of delinquencies. The Solicitor, with the aid of his staff, not only helps the Tribunal in acquiring essential information from Government Departments, but also performs functions under the direction and control of the Tribunal, which in a criminal case are performed by the Police. In the course of such investigation, the Solicitor examines witnesses, collects, collates and shifts evidential material which would be useful to the Tribunal in finding the facts related to the matters under enquiry. The Solicitor provides copies of their own statements to the witnesses. The Tribunal ensures that the *substance* of those statement is furnished, at the earliest, to all persons interested, including those whose conduct "may be question or whose reputation is likely to be prejudicially affected by the inquiry.

Indeed, some Tribunals which had been constituted under the English Act, have frankly acknowledged that but for the assistance afforded by the Treasury Solicitor and his associates, it would have been impossible for them to accomplish their task effectively and properly."

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"The Royal Commission of Tribunals of Inquiry, 1966, set up in U.K. strongly recommended the continuance of the practice of the Treasury Solicitor being in constant consultation with the Tribunal. The Royal Commission felt that a few weeks spent more in preparing the material for arriving at the truth is a small price to pay in order to avoid injustice. In its opinion, a preliminary investigation by the Treasury Solicitor and his staff ensures that any allegations and the substance of the evidence in respect of each allegation would be made known to the persons likely to be affected by the inquiry at the earliest stage, so as to give them an adequate opportunity of preparing their case.

In the words of the Royal Commission—

".....the Tribunal's function is not only to report upon but to inquire into the matters which are disturbing the public. It is the Tribunal alone which is entrusted by Parliament to carry out this important duty on the Public's behalf and it is in the Tribunal alone which, for this purpose, the public reposes its confidence. The nature of the task of the tribunal is, therefore, inescapably inquisitorial. In carrying out this task, it cannot "and should not be deprived of the services of Solicitors and counsel, for, their services are essential. But for that the Tribunal would have to interview the witnesses personally before hearing their evidence. This would, in our view, be in the highest degree undesirable. The Tribunal must therefore, be in close touch with the Treasury Solicitor for the purpose of directing the lines of investigation and with Counsel, for the purpose of being advised upon them.....Experience has shown that such consultations are essential for the efficient discharge of the task of the Tribunal. Indeed, the Chairman of the last two Tribunals of Inquiry have stated in evidence that without such assistance, their task would have been impossible. The system has not in the past and, in our view, will not in the future, in any way hinder the Tribunals from arriving at impartial findings."

The Royal Commission further went on to recommend that the practice in England for the Tribunal *to consider* the evidence which is collated by the Treasury Solicitor, should also be provided in Scotland, where the practice had been for the Tribunal not to see the statements or precognitions of the witnesses."

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"The Law Commission of India, in their 24th Report on the Commissions of Inquiry Act, 1952, recommended (*vide* paragraph 17, page 13 of the Report), that a machinery similar to that of the English Treasury Solicitor and his permanent staff, as obtaining in England, be set up to relieve the Commissions of Inquiry of a great deal of preliminary and routine work over which they should not waste their time."

This Report of the Law Commission was considered by the Joint Committee of Parliament, which was set up to examine the Commissions of Inquiry (Amendment Bill, 1965). The provisions which was subsequently inserted as Section 5-A in the parent Act, was contained in Cl. (5) of the Bill. This is what the Joint Committee said with regard to cl. (5) :

“ The Committee feel that a Commission appointed by the Central Government should have the power to utilise the services of any officer or investigation agency of the State Government and vice versa and that the officer or agency whose services are utilised should be enabled to ~~summon~~ and examine persons, require the discovery and production of documents and requisition public records. The Committee also feel that no statement made by a person before any officer or investigation agency whose services are utilised by the Commission shall subject him to, or be used against him in, any civil or criminal proceedings and that the provisions of section 6 of the principal Act should be made applicable to such statements also. The clause has been amended to achieve the above objective.”

Ultimately, these recommendations of the Joint Committee were accepted by Parliament and the Amendment Act 79 of 1971 was passed. This Act received the assent of the President on December 30, 1971, and was published in the Gazette of India on December 31, 1971. The statement of Objects and Reasons for enacting this Amending Act of 1971 says :

“ Certain difficulties and deficiencies experienced in the working of the Commissions of Inquiry Act, 1952, were referred to the Law Commission for suggesting suitable amendments to the Act. Taking into account the importance of the Act and the need for a proper system of inquiries, the Law Commission undertook a comprehensive examination of the entire Act and made a number of recommendations in their Twenty-Fourth Report for the revision of the Act in several respects.”

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“ A plain reading of Section 5-A would show that there is nothing in the language of this provision which restricts the exercise of the power given therein to any particular period of time. The exercise of this power is not dependent upon the determination or existence of any preliminary, jurisdictional fact. Nor does this provision, expressly or by necessary implication, require the Commission to hear the persons ‘interested’ before making an order for investigation. The word ‘may’ shows that the exercise of the power is discretionary. While invoking this enabling provision the Commission does not function as a Court or a quasi-judicial Tribunal. The power is purely administrative. The investigation envisaged by the Section is intended merely to assist the Commission in the performance of its inquisitorial task. Whether a matter before the Commission should or should not be got investigated by the machinery provided in Section 5-A and what should be the subject extent and manner of that investigation, are questions entirely for the subjective satisfaction of the Commission. The legislative history of this provision which I have already surveyed in detail shows that such investigating machinery acts as an auxiliary to the Commission, and is, generally, brought into motion at the earliest stage of the proceedings. The scheme of the 1952 Act contemplates expeditious disposal of its task by the Commission within the “Specified time limit.” In terms of Section 5-A, that the officers or the agencies of the Government, appointed to assist the Commission, are required to do is “investigation” and to produce an “investigation report.” “Investigation” is not defined in the 1952 Act. While it can safely be said that “investigation” and “inquiry” in the context of 1952 Act, are not mutually exclusive terms, the scope of the “inquiry” is wider ; it includes “investigation” and something more. “Investigation” particularly in the initial phase, assumes more the character of a minute survey, reconnaissance, exploration, detection of and search for evidential matter. It will therefore, not be wide off the mark to say that “investigation” is that preliminary stage of the “inquiry,” during which evidential material is systematically traced discovered, collected and collated. The substantive stage of the inquiry is reached when the Commission examines all the matter collected by the investigating officers, and also that received by the Commission, itself, in response to the notices/notification under Rule 5 (2), with a view to bringing the same in evidence, or otherwise in use as evidential material and then appraising it for reaching a finding of fact.

Thus an investigation report submitted under Section 5-A provides the Commission with a rudder and compass with the aid of which it can avoid a fishing, random probe and direct the inquiry through well-indicated channels. Intimation of the investigation report, further, enables the persons whose conduct is in question or whose reputation is likely to be prejudicially affected, to know, with full particularity the allegations that they have to meet at the inquiry. Furthermore, if the investigation report shows that a certain Allegation is groundless or is foredoomed to failure for want of evidence, and on enquiry sub-section (5) of s. 5-A, the Commission is satisfied about the correctness of the Report, it can summarily dismiss that Allegation and drop further proceedings in respect thereof.

Keeping in view the language of Section 5-A, its legislative background, its object and scheme, I have no hesitation in holding that a Commission is competent to make an order invoking Section 5-A (1), without hearing the "parties" or persons interested, on its own subjective satisfaction, at any time after the publication of the Notification under Section 3. Indeed, the facility provided in Section 5-A can be put to optimum use only if it is invoked at the earliest, after the constitution of the Commission."

"The contention is that under Section 5-A the Commission could order only a local investigation into any matter, fact or issue arising out of any definite matter of public importance under inquiry before it; that it could not make for over all the 28 Allegations entrusted to it for inquiry under the Government Notification, to the officers/investigation agencies of the Central and the State Government because such an order would amount to wholesale delegation of its powers by the Commission.

This contention is misconceived. Firstly, there is nothing in Section 5-A, which restricts the use of this facility only to any "fact or issue" arising out of any subject-matter under inquiry before the Commission. The expression "any matter" occurring in Section 5-A is wide enough to include any principal matter which may have been entrusted to the Commission for inquiry by the Government Notification issued under Section 3. The word "matter", used in singular, would, according to the well-recognised principle of legal interpretation, include its plural, also. (Section 13 (1) of the General Clauses Act, 1897). Secondly, it has been settled by a bead-roll of authorities (including those of the Supreme Court) that a Commission set up under the 1952 Act is neither a Court, nor a quasi-judicial Tribunal discharging judicial or quasi-judicial functions. Its main task is to find facts through an inquisitorial, investigatory process. Neither the Code of Criminal Procedure, nor the Evidence Act applies to the proceedings before it. (see *Rama Krishna Dalmia v. S. R. Tendolkar*—1959 SCR 279 : A.I.R. 1958 S.C. 538). It can, subject to the statutory provisions contained in the Act and the Rules framed thereunder, devise its own procedural regulations. (Section 8).

Nomination of investigating officers or agencies under Section 5-A is done essentially to assist the Commission in the discharge of its inquisitorial functions. Such officers/agencies work under the direction and control of the Commission. The effective control of the Commission over the investigation required to be made by the nominated officers/agencies is not lost even after the passing of an order under Section 5-A. The investigation report, including the conclusions, if any, given therein, is not binding on the Commission. It can be made use of only if, after making the inquiry contemplated by Sub-section (5), the Commission is satisfied with regard to the correctness of the facts stated therein. This being the case, no question of delegation of its powers and functions by the Commission arises.

"Legal Objection (ii) is to the effect, that statements recorded by the investigating officers under Section 5-A, not being on oath or solemn affirmation, cannot be used as evidence in the case before the Commission. The point sought to be made out is that the material collected by the investigating officers cannot be used for proof or disproof of any disputed fact or allegation because it does not fall within the definition of the term "evidence" given in Section 3 of the Evidence Act.

The contention is based on false assumption.

The *first* of such assumptions is that the Evidence Act, in terms, applies to proceedings before the Commission. This, supposition is not correct. As mentioned earlier, neither the Evidence Act, nor the Code of Criminal Procedure, nor the Code of Civil Procedure, as such, applies to proceedings before the Commission. Therefore, *material* which may not be strictly relevant as "evidence" under the Evidence Act, but has a bearing on the matters under inquiry, can be taken into consideration by the Commission in reaching a finding of fact.

The *Second* wrong assumption that appears to have been made is that under the Evidence Act that material only which strictly answers the definition of "evidence," oral or documentary, given in that Act, can be used to prove the existence or non-existence of a fact. The definition of the term "Proved" given in Section 3, Evidence Act, itself, demonstrates the fallacy of the argument. According to that definition, "a fact is said to be proved when, after considering the *matters* before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of a particular case, to act upon the supposition that it exists." "*Matters* before it," in this definition, include *material* which does not fall within the definition of "evidence" given in that Act. The Legislature advisedly refrained from the use of the word "evidence" in the definition of "Proved" because the narrow definition of this word given in the Evidence Act, does not cover all the matters which are taken into consideration for the purpose of determining a fact in issue or a relevant fact. For instance, the result of a local inquiry or inspection made by the presiding officer of a Court, may be taken into consideration by the Court in determining a matter in dispute before it, even though the note embodying that result may not answer the definition of "evidence" given in the Evidence Act. True, that

the Court cannot pass judgment solely on the impression formed by it at the local inspection and come to a conclusion contrary to the "evidence" in the case. Nevertheless, it can take that impression into account in adjudicating the dispute before it. Similarly, *admissions* made in pleadings, or orally, during examination under Order 10, Rules 1 and 2, Civil Procedure Code, do not fall within the definition of "evidence" under the Evidence Act, but they are "matters" which can be legitimately taken into consideration by the Court in determining a relevant fact. "Other instances of "matter" which is not "evidence" are: *material objects*, other than a document, produced in Court; the demeanour of witnesses, and certain *notorious* facts of which under Sections 56 and 57, Evidence Act, the Court can take judicial notice." Thus, even under the Evidence Act, "matters" which are not "evidence" can be taken into consideration for proof or disproof of a relevant fact, more so by a Commission in an inquisitorial proceedings under the Commission of Inquiry Act, 1952.

While devising procedural regulations under Section 8, at its preliminary sittings, the Commission had clarified that technical rules of the Evidence Act do not govern the recording and admissibility of Evidence before the Commission (Regulation 19). But in matters not covered by the statutory provisions, the broad, fundamental principles, as far as practicable, may be taken as a guide. Now, the definition of "evidence" under the Evidence Act is, as already noticed, technical, narrow and incomplete. In its comprehensive, general sense conveyed by the juristic principle behind the definition of "Proved" in Section 3 of the Evidence Act, all matters or material which can be legally taken into consideration by a Court for determining a fact, is "evidence."

Considered in the light of this broad enunciation, it will not be wrong to say that the investigation reports of the investigating officers/agencies appointed under Section 5-A (1), if found factually correct to the satisfaction of the Commission, can be validly used as *evidence* by it for finding a fact in question before it.

Be that as it may, a clear indication is available in the language of s. 5-A, itself, that the "investigation report"—which expression includes statements recorded by the investigating officer—can be used for basing a finding of fact, even if such statements are not "evidence" in the strict, technical sense of the term. Such an indication is to be found in sub-section (3) which, for the purpose of the immunity available under Section 6, equates a statement made by a person before an officer or agency whose services are utilised by the Commission under Section 5-A (1), with a statement made before the Commission.

The further question that crops up is : Do the statements recorded by such officer/agency, stand, in terms of probative value, on an inferior footing than the evidence taken on affidavits or on examination *viva voce* before the Commission, merely for the reason that these statements are not on oath or solemn affirmation ?

In my opinion, the answer to the question must be in the negative. As rightly explained by the learned Additional Solicitor-General, such statements, in terms of their evidential value, stand on a *different*, and *not* on an *inferior* footing than the sworn evidence taken or secured by the Commission. For assessing the evidential value of an investigation report made under s. 5-A, it may be convenient to divide it into three parts.

Under the *first* part would fall the *documentary material* collected by the Investigating Officer.

In collecting such material the position of the investigating officer is substantially the same as of a ministerial agent or officer executing an order or process issued by the Commission under s. 4 (b) and (d). Such of this documentary material which is relevant and is of an undisputed or unimpeachable character, or consists of official records falling within the procedural Regulation 18 framed by the Commission, can be straightaway used as evidence by the Commission. Other relevant documentary material which has been referred to or relied upon by a witness in his sworn statement or oral testimony, can also be used as evidence. Other relevant documents, about the authenticity of which the Commission is satisfied, can also be used as evidence in the case. In short, the documentary material collected and produced by the investigating officer for the inspection of the Commission, would satisfy even the narrow definition of "documentary evidence" given in s. 3 of the Evidence Act.

The *Second* part of an investigation report under s. 5-A, would include *statements* recorded by the officer/agency whose services are being utilised by the Commission. The use of such statements is not subject to the restrictions and inhibitions from which a statement recorded by a Police officer in the course of investigation under the Code of Criminal Procedure, suffers. Legally, it can be used as evidential material, for all purposes, by the Commission in discharging its fact-finding functions ; *a fortiori* it can be used to corroborate or contradict the sworn evidence of its author, taken or procured by the Commission, itself, in my mode permissible under the 1952 Act.

Under the *third* part of the investigation report, would fall the summing up of the result of the investigation, including the conclusions, if any, drawn by the investigating officer. The words "if any" occurring in sub-section (5) of the section show that it is not necessary for the investigating officer to give his conclusions. Since the entire investigation under s. 5-A is subject to the direction and control of the Commission, the investigating officer can be restrained from giving his own opinion or comment as to the evidential value of the material collected by him in the investigation report. (The evidential value of this part of the investigating report, depends upon various factors, including the nature of the matter investigated, the care or thoroughness with which the investigation is conducted, the reasons given by the investigator in support of his conclusions, if any, etc.) If the matter to be investigated is a matter of science or skill or art or trade, and the report is rendered by an expert on the subject, it would be admissible as 'evidence' even under s. 45, Evidence Act. For instance, if the matter to be investigated consists of numerous entries in the account-books of a company, and the investigating officer appointed under s. 5-A to investigate is an expert or specially skilled in accountancy, his investigation report would be admissible as evidence before the Commission. The opinion expressed in an investigation report submitted by an officer under s. 5-A, who is not covered by the broad principle underlying s. 45, Evidence Act, albeit evidential material, does not stand on the same footing as substantive 'evidence.'

The legal position that emerges from the above discussion is, that all parts of an investigation report made by Government Officer/agency whose services are utilised under s. 5-A, can, if the Commission is satisfied about the correctness of the facts stated therein, be used as evidential material and taken into consideration by the Commission for finding a fact in question.

Legal position apart, it must be remembered that the Commission alone has been entrusted to carry out this important task by virtue of the Government Notification dated 3rd February, 1976, on public's behalf. It is in the Commission alone that the public has, acting through its elected representatives, reposed confidence. In view of this, as a matter of prudence, I have, in the case of these Allegations which amount to a criminal charge, or, are akin thereto, decided to base my findings *mainly* on evidence taken by myself, either on oral examination or on affidavits or by both the methods. Such evidence will of course include documents duly tendered in evidence before the Commission, or duly made a part of the Commission's record, irrespective of whether they were collected through the officers or the agencies whose services are being utilised under s. 5-A, or directly by the Commission. However, the statements recorded by the investigating officers under s. 5-A may be used to corroborate or contradict the sworn evidence taken or procured by the Commission, itself.

From the sworn evidence of the witnesses taken or procured by me, I am entirely satisfied that the officers assisting the Commission under s. 5-A have conducted the investigations entrusted to them, impartially, fairly and with utmost rectitude. I am further satisfied beyond all manner of doubt, that the investigation reports, particularly the statements of the witnesses incorporated therein, have been correctly and faithfully recorded. The allegations made against these investigating officers are baseless.

All said and done, the objections raised by the Respondents against the validity and use of the investigation reports have become largely academic, because in respect of all the important Allegations, I have decided to take the evidence of all the material witnesses either on affidavit or on viva voce examination; or by both the methods.

The 36th, 37th and 38th sittings of the Commission were held at the Tamil Nadu House, New Delhi, on the 1st, 2nd and 3rd December, 1976. The depositions of Sarva Shri Nagamiah and Basheer Ahmed in respect of Allegation No. 15 and Sarva Shri Ramakrishnan, Jamal Mohammed and Raja Mohan in respect of Allegation No. 22, were recorded. Further arguments were also heard in respect of Allegations 15 and 22. I then announced that the sittings of the Commission would be adjourned to some date in January, 1977, to be intimated later.

APPENDIX I

SARKARIA COMMISSION OF INQUIRY

Vigyan Bhavan Annexe, New Delhi

(Commission of Inquiry to enquire into the allegations against erstwhile Chief Minister and other Ministers of Tamil Nadu.)

REGULATIONS OF PROCEDURE TO BE FOLLOWED BY THE COMMISSION OF INQUIRY

1. The proceedings will be conducted in English.
2. The Headquarters of the Commission shall be Annexe to Vigyan Bhavan (Room Nos. 119, 120-121, 122, 123, 124, 126 & 132-A, First Floor), Maulana Azad Road, New Delhi.
3. The office of the Commission shall function from 10-00 a.m. to 1-30 p.m. and 2-00 p.m. to 5-00 p.m. on all days other than holidays observed by the Central Government.
4. The Commission will ordinarily hold its sittings in one of the Committee Rooms of the Vigyan Bhavan, Maulana Azad Road, New Delhi, but some sittings may be held at Madras or at any other place in the State of Tamil Nadu. The dates, timings and venue of the different sittings of the Commission will be notified from time to time.
5. Since the imputations relate to acts or omissions committed by the respondents in their public capacity, the general public who in our democratic set-up are the ultimate masters and final arbiters, are vitally interested in the proceedings of the Commission. It is, therefore, directed that all the hearings of the Commission will be open to the public, excepting when the Commission may, for good reason, think it fit to sit in camera.
6. When statements on affidavit are invited by the Commission the affidavit shall be sworn before a Magistrate of the 1st Class or other authority legally empowered to administer oath. The affidavits may be sent to the Secretary of the Commission, Vigyan Bhavan Annexe, New Delhi by registered post with Acknowledgement Due, or personally handed over to the Secretary of the Commission or some other officer authorised by the Commission in this behalf, and a receipt obtained.
7. If the affidavit is in a language other than English, it shall be accompanied by a translation thereof in English, duly authenticated by Counsel or a Magistrate of the 1st Class.
8. The Magistrate or the authority before whom the affidavit is sworn, shall make this endorsement thereon :

“ Sworn before me by the deponent who is identified to my satisfaction by
or is personally known to me. The affidavit has been read out in full to the deponent
who has signed it after admitting it to be correct, thisday of.....
1976 at.....

Signature of the Magistrate/Authority.”

9. Every affidavit shall be drawn up in the first person and divided into paragraphs to be numbered consecutively, each material statement of fact being made the subject-matter of a separate paragraph. The affidavit shall state the description, occupation, if any, and the true place of abode of the deponent.

10. Towards the end, the affidavit shall be verified in the following manner :

“ Verified that the statements made in paragraphs.....of the above affidavit are true
to my personal knowledge and those in paragraphsfrom information received
and believed to be true by me.”

If such information is derived from any document or record, the particulars and nature of such document and the person in control or custody thereof should be indicated. If any part of the statement in the affidavit is verified from information received, the source of such information should be disclosed. The deponent shall file alongwith his affidavit a list of documents on which he intends to rely. He shall also file a list of witnesses with their full particulars and addresses, whom he would like to examine in support of his statements in the affidavit. Against the name of each witness, the deponent shall indicate briefly the fact or facts, which the witness is expected to prove in his examination, and why instead of oral examination, his examination on affidavit will not suffice.

11. The parties/persons filing an affidavit may file seven spare copies thereof so that they may be exchanged between the parties.

12. If the deponent relies for the whole or any part of his statement in the affidavit, on any document, the original document or a duly certified copy thereof shall be filed along with the affidavit. If the original of such a document is not in the possession or control of the deponent, he shall disclose the person who is in custody thereof. In case the document is an official record, the Department or the officer in custody and control thereof may be indicated.

13. In order to avoid confusion and embarrassment, a separate affidavit should, if possible, be filed in respect of each head of allegation. A multifarious affidavit in respect of diverse allegations pertaining to different allegations should, as far as possible, be avoided. In the beginning of the affidavit, a reference shall be given of the serial number of the allegation, in respect of which the affidavit is being filed.

14. After examination of all the statements that may be furnished in response to the notices issued under rule 5, the Commission may, if it considers necessary in the interest of justice, call upon any person filing an affidavit to give oral evidence and submit himself to cross-examination. In such a case the affidavit already filed by the person may be treated as part of his examination-in-chief. If the Commission decides under rule 5 (5) (a) to record oral evidence, it shall first record the evidence, if any, produced by the Central Government and the other persons prosecuting the allegations with regard to the subject matter of the inquiry against the respondents. No party, however, will have the right to insist on oral examination of any deponent of an affidavit.

15. In case oral evidence is recorded, cross-examination, shall be allowed to all parties and persons as indicated in Section 8-C of the Act.

16. The Commission may, in its discretion, refuse to call any person for oral examination or cross-examination and, instead, allow him to be examined on affidavit through interrogatories, delivered to him.

17. Every person furnishing a list of witnesses for examination by the Commission shall indicate against the name of each witness the fact for which his oral examination is deemed necessary and why the same evidence cannot be properly obtained by the Commission, on affidavit. The Commission may refuse to summon any witness whose evidence it thinks is unnecessary, or irrelevant, or, who in its opinion, has been cited for the purpose of delay and vexation.

18. Registered documents, in original, or their certified copies issued by the Registration Department will, as a rule, be admitted without requiring formal proof of their execution. Similarly, official records pertaining to Government Departments, Statutory Bodies, State Undertakings and Co-operative Societies, including the office notings, orders, etc., may, subject to any valid claim of privilege, be admitted without formal proof unless the Commission, in any particular case, requires it to be proved in any of the ways laid down in the Evidence Act.

19. Technical rules of the Evidence Act, as such, do not govern the recording and admissibility of evidence before the Commission. However, the fundamental principles of natural justice underlying the primary provisions of the Evidence Act shall be followed as a guide.

20. Further regulations of procedure, consistent with the Act and the Rules framed thereunder, will be devised as and when the necessity for the same arises.

21. The Secretary to the Commission has been authorised under Rules 4 (2) and (6) of 1972 Rules to sign summons and every other process issued by the Commission.

22. The Commission thinks it will not be fair to take up all allegations at once or seriatim. After receiving the affidavits in response to notices under rule 5 (2), the Commission will deal with the allegations in convenient groups.

23. The Commission may, either *suo motu* or on the application made by any person or party, delete or expunge any matter from any petition, affidavit or other document, or return any document presented to the Commission which, in the opinion of the Commission is irrelevant or needlessly offensive, scurrilous or scandalous.

24. The Commission reserves its right to alter, modify, delete, or add to, any of these regulations of procedure at any time during the enquiry, as and when it considers necessary.

15th May, 1976.

By Order of the Commission.
(Sd.) K.A. RAMASUBRAMANIAM,
Secretary.

APPENDIX II

SARKARIA COMMISSION OF INQUIRY

ORDER

After I read out the draft regulation of procedure to the Counsel for the parties, who appeared before me in response to the notice, on the 14th May, 1976, Shri Shanti Bhushan, learned Counsel for Thiru M. Karunanidhi and others, moved two petitions, one purporting to have been made by Dravida Munnetra Kazhagam Party represented by their General Secretary, Thiru V. R. Nedunchezian, and the others on behalf of Thiru M. Karunanidhi. In the petition filed on behalf of D.M.K. Party, a large number of allegations have been made. It is alleged *inter alia*, that evidence for producing before the Commission is being collected illegally by the C.B.I. and the Special Police Cell set up by the State Government of Tamil Nadu in collaboration with the authorities of the Income-tax Department ; that Censor Officer of the State of Tamil Nadu is according favourable treatment to "Makkal Kural", inasmuch as this newspaper is allowed to comment and pronounce upon the truth or otherwise of the allegations which are the subject matter of this Commission's terms of reference, while an equal opportunity is denied to "Murasoli," a newspaper edited by Thiru Maran of D.M.K. Party, which is not permitted to publish anything in reply to the defamatory matter appearing against the respondents in "Makkal Kural." It is prayed in this petition : (a) that the Commission should direct the C.B.I., the State Government and the Police Cell set up by it, not to carry out investigation relating to the charges under inquiry with or without use of Police force, power of search, seizure, arrest or detention without specific authorisation from the Commission and (b) further direct them not to file or make use in this enquiry any statements or evidence illegally collected by them. A third prayer has been made that the State Government be directed to prevent, through their Censor, publication in "Makkal Kural" or any other newspaper any material or comment or information relating to the charges under enquiry by the Commission.

It may be noted that orders under Section 5-A utilizing the services of certain officers of C.B.I. and six officers of the investigating agency of the State Government for the purpose of conducting investigations pertaining to the matters constituting the Commission's terms of reference, were made by this Commission. These orders became operative only in the second week of May, 1976, when those officers were nominated by the Governments concerned. It is therefore manifest that the allegations, many of which are bereft of material facts and particulars, pertain to a period prior to the coming into operation of the orders made under Section 5-A. Under Sub-s. (2) of Section 5-A, only those officers or investigating agencies of the Central or State Government are subject to the direction and control of the Commission, whose services are utilised by the Commission with the concurrence of the Government concerned, by taking action under sub-section (1) of that section. The Commission has no control over the investigation, if any, conducted by an officer or agency of the Central Government or State Government whose services have not been placed at the disposal of the Commission in the manner provided in sub-section (1) of Section 5-A. Nor are the investigations conducted by the Police in exercise of the power under the Code of Criminal Procedure or by the Income-tax or Wealth-tax officers under authority derived from special enactments, subject to the direction and control of the Commission. The allegations of improprieties, irregularities or wrongful acts in the petition do not relate to the conduct of the officers or agents whose services are being utilised by the Commission under Section 5-A.

The Commission therefore, has no jurisdiction to issue the general directions prayed for in the petition, to the investigating agencies of the Central and State Government or to the Censor Officer of the State of Tamil Nadu. The Commission is not the right forum for seeking the reliefs prayed for in the petition. Indeed, the Commission is told that a writ petition under Article 226 of the Constitution substantially founded on these very allegations against Shri Vijayaraghavan and others is pending in the High Court at Madras. The matter is sub-judice. This is an additional reason why it will not be proper for the Commission to say anything in regard to the correctness or otherwise of the allegations made in this petition, which, with a few exceptions, are of a general and sweeping nature, lacking in material particulars.

The second prayer in the petition is, in the first place, based on the assumption that evidence has been collected for producing before the Commission by the investigating agencies of the State and Central Government, in an unauthorised and illegal manner. It is, as already observed, beyond the province of the Commission to enter into a roving collateral enquiry into this question. Secondly, this question, at this stage, is purely academic and premature. The question could be raised only at the appropriate stage and that, too, with reference to any specific piece of evidence produced or sought to be produced before the Commission. Thirdly, it is well-settled that evidence collected by making an illegal search or in contravention of law does not necessarily become inadmissible in a judicial proceeding. If any authority is needed, reference may be made to *Radha Kishan v. State of Uttar Pradesh* (A.I.R. 1963 S.C. 822) and *Sundar Singh v. State of Uttar Pradesh* (A.I.R. 1956 S.C. 411). In these cases, it was held by the Supreme Court

that evidence collected illegally such as seizure of articles in a search made in contravention of ss. 103 and 165 of the Code of Criminal Procedure will not invalidate or vitiate the evidence although the illegal manner of collecting the evidence will be a factor to be taken into account while assessing the probative value of that evidence. It is therefore, open to the respondents to raise these questions in a concrete form at the stage of final arguments.

It may be reiterated that this petition has been filed on behalf of a political party *viz.*, D.M.K. to ventilate grievances, the investigation of which is not the concern of this Commission. By and large the contents of this petition are irrelevant. It is therefore ordered, in accordance with the procedural Regulation No. 23, devised by the Commission, that the petition be removed off the record and returned to the petitioner.

In the second petition, dated May 14, 1976, filed by Thiru M. Karunanidhi, through his Counsel, Shri M. Shanmugham, it is prayed that the Commission should clarify—(i) that clause (b) of the Commission's terms of reference is "confined to an enquiry into any irregularity, impropriety or contravention of law on the part of those persons referred to in the allegations covered by cl. (a) of the Central Government Notification, dated February 3, 1976, issued under s. 3 of the Act, who hold any office as Minister during the relevant time" and (ii) "no other unspecified matter shall be inquired into except what is directly covered by cl. (a) or clause (b) as clarified above of the terms of reference of the Commission."

The Central Government Notification dated February 3, 1976, issued under s. 3 of the Commissions of Inquiry Act, provides that the terms of reference of the Commission shall be as follows :

- "(a) to inquire into the following allegations, namely :
 - (i) the allegations contained in the Memorandum dated 1st December, 1975, received from Sarvashri K. Manoharan and G. Vishwanathan, addressed to the President.
 - (ii) such of the allegations contained in the Memorandum dated the 4th November, 1972, received from Shri M. G. Ramachandran and Memorandum dated the 6th November, 1972, and 20th December, 1972, received from Shri M. Kalyanasundaram, M.P., as are specified in the Annexure to this notification ;
- (b) inquire into any irregularity, impropriety or contravention of law on the part of any person in relation to any matter referred to in the allegations aforesaid ;
- (c) to inquire into any other matter which arises from or is connected with or incidental to, any act, omission or transaction referred to in the allegations aforesaid."

The point canvassed by Mr. Shanti Bhushan is that the words "any person" occurring in the aforesaid clause (b) are too vague and indefinite, and thus, what is contained in cl. (b) is neither "definite" nor a "matter of public importance" within the meaning of s. 3 of the Act. Counsel submits that before embarking on the enquiry the Commission should seek a clarification of the true import of the words "any person" occurring in cl. (b) from the Central Government. A similar contention has been raised in regard to clause (c) of the terms of reference. It is argued that this clause, also, is too general and indefinite. Thus, in a way, the Counsel is questioning the validity of clauses (b) and (c) of the terms of reference contained in paragraph (2) of the Notification.

These contentions must be repelled. It is undisputed that cl. (a) of the terms of reference contained in the said Notification, does relate to "definite" matters of "public importance." Clauses (b) and (c), in terms, relate to clause (a). Clauses (b) and (c) are therefore not to be construed in isolation. They have to be read along with the matters mentioned in sub-clauses (i) and (ii) of clause (a). Indeed, in clause (b), the words "any person" are qualified by the succeeding words "in relation to any matter referred to in the allegations aforesaid." The word "aforesaid" puts it beyond doubt that the ambit of this clause is to be considered with reference to the allegations which form the subject-matter of clause (a). Similarly, the scope of clause (c) is to be ascertained with reference to the allegations in cl. (a). Thus read, these clauses (b) and (c) cannot be said to be vague or invalid on the ground that they do not relate to a 'definite matter of public importance.' These clauses have further to be applied in the light of what is provided in s. 8-B of the Act and the other provisions in the Act and the rules framed thereunder. At this stage, when there is no concrete case touching the interpretation and scope of the Commission's terms of reference, it will not be advisable to say anything more with regard to the scope of the terms of reference. The Commission will explain the terms of reference further, if and when such explanation becomes necessary in the light of facts that may emerge as the enquiry proceeds. Suffice it to say now, that there is no apparent ambiguity or infirmity in the terms of the reference contained in the aforesaid Notification, dated February 3, 1976, requiring clarification by the Central Government.

The petition is disposed of accordingly.

Shri Shanti Bhushan, Counsel for Shri M. Karunanidhi and others, has pressed two points suggesting the procedure and sequence in the matter of issuing notices under Rule 5 (2) : Firstly, it is urged that Notices under Rule 5 (2) be first issued to the Memorialists and to the general public requiring them to furnish their affidavits/statements by a specified date or dates in respect of the allegations mentioned in the Notification, dated February 3, 1976 constituting the Commission. After such affidavits/statements have been received from the Memorialists and the general public in response to the Notices issued by the Commission, another notice should be issued to the respondents requiring them to furnish their statements. Secondly, the notices to be issued to the respondents should require them to file an affidavit in respect of these allegations only which the Memorialists may reiterate and aver in their affidavits and not with reference to those allegations which they may not now choose to press or pursue.

Mr. Ashok Sen, appearing for the Memorialists and Mr. Harish Chandra, appearing for the Central Government opposed the suggestions made by Shri Shanti Bhushan. Mr. Sen's argument was that Rule 5 (2) contemplates simultaneous issue of notices to the Memorialists and the respondents and other persons prejudicially affected, calling upon them to furnish their statements accompanied by affidavits with respect to those matters only which may be *specified* in the notices. Consequently, at this stage, the respondents are not justified in asking the Commission to postpone the issue of notices to them till after they have seen the affidavits filed by the Memorialists and the statements of other persons in response to the notices issued under cl. (a) and (b) of Rule 5 (2). The procedure suggested by Mr. Bhushan, according to Mr. Sen, will only cause delay in commencement of the enquiry.

Mr. Harish Chandra submitted that the nature of this inquiry does not bear the character of a suit between the plaintiffs and defendants, and even if the Memorialists do not now choose to press some of the allegations originally made by them, that will not absolve the Commission of its statutory duty to enquire into the same case.

Taking Mr. Bhushan's second argument first, it may be observed that it proceeds on a misconception of the nature and scope of the enquiry entrusted to a Commission constituted under s. 3 of the Act.

From a plain reading of s. 3 of the Act, it is clear that a Commission is appointed by the appropriate Government only for the purpose "of making an enquiry into any definite matter of public importance and performing such functions and within such time, as may be specified in the notification." The Central Government Notification, dated February 3, 1976, issued under that Section, imposes a duty on the Commission, to enquire into the matters specified therein and perform its functions accordingly. The task of the Commission is essentially inquisitorial. It is inherent in the inquisitorial procedure that there is no *lis*. There is no plaintiff or defendant, no prosecutor or accused. The Memorialists on whose memorandum the Central Government has set up the Commission, are not *dominus litis*. They cannot, as pointed out by Chief Justice S. R. Dass (in his Report of enquiry against Sardar Pratap Singh Kairon) stop the enquiry by abandoning their allegations. Unless and until the Central Government declares under s. 7 of the Act, that this Commission shall cease to exist, it is duty bound to proceed with the enquiry and make its report to that Government. The Commission is under a statutory obligation to collect evidence not only from the Memorialists but also from any member of the public who may be able to furnish information bearing on the subject-matter of the enquiry *vide*, Rule 5 (2) (b). The Commission, therefore cannot abdicate its functions or divest itself of its statutory duty to enquire into any of the allegations which comprise its terms of reference, merely because the Memorialists have now chosen not to pursue or press that allegation.

This contention of Mr. Bhushan fails and is negated.

I now come back to the first contention of Mr. Bhushan. This contention has two limbs : First, that the respondents whose conduct is under enquiry, should be required to furnish their statements accompanied by affidavits, only after the filing of the affidavits by the Memorialists in response to the notices issued to them under Rule 5 (2) (a). Second, that the respondents should be required to file their affidavits only after the members of the public have filed their statements in response to the notification under Rule 5 (2) (b), which should be issued only after the filing of their affidavits by the Memorialists. In support of this two-fold contention, Mr. Bhushan referred to the Report of Ayyangar Commission which enquired into charges against Bakshi Ghulam Mohammad ; the Report of Mr. Justice H. R. Khanna in the enquiry against Shri Biju Patnaik and others ; the Report of Mr. Justice Venkatarama Iyer in the enquiry against Shri K. B. Sahaya etc., the Report of Chief Justice Shri S. R. Dass regarding the enquiry against Sardar Prata Singh Kairon, Chief Minister of Punjab.

So far as the first limb of the contention is concerned, there is merit in it. One of the basic principles of justice and fairplay is that the persons whose conduct is in question, must know at

the earliest, the allegations they are required to meet at the enquiry. In deference to this cardinal principle, Rule 5 (2) (a) requires that notices to be issued to the respondents and others likely to be prejudicially affected, must *specify* the matters in respect of which the statements are required to be furnished. If the respondents and others who in the opinion of the Commission, should be given an opportunity of being heard, are allowed the facility of filing their statements, after they have seen the affidavits filed by the Memorialists, it will only be an extension of the juristic principle that underlies Rule 5 (2) (a). No infraction of Rule 5 (2) (a) will be involved in adopting this course. Indeed, Section 8-B of the Act, envisages that notices to persons likely to be prejudicially affected or whose conduct is to be inquired into, can be issued by the Commission *at any stage*. The contention of Mr. Bhushan is therefore, accepted to this extent that the respondents and others likely to be prejudicially affected, shall be required to file their statements, only after the Memorialists have filed their affidavits in response to the notices under Rule 5 (2) (a), and the respondents and others have had sufficient opportunity of inspecting those affidavits or procuring copies thereof.

This takes me to the second limb of the argument. Will it be reasonable and proper to postpone the issue of notification under Rule 5 (2) (b) till the receipt of the statements/affidavits of the Memorialists and the furnishing of their statements on affidavits by the respondents, till after the receipt of the statements, if any, from the members of the public in response to the public notification under cl. (b) of Rule 5 (2) ? For reasons that follow, the answer to this question must be in the negative.

It is true that in the past, some Commissions of Inquiry set up under this Act had followed this procedure and sequence in complying with the requirement of the then extant Rule 2 (1) which corresponds to Rule 5 (2) of the 1972 Rules. This was the procedure followed by the Dass Commission, and later by Mr. Justice H. R. Khanna (who constituted the one-man Commission of Inquiry against Shri Biju Patnaik and others) in seeking compliance with Rule 7 (1) (b) of the Orissa Commissions of Inquiry Rules, 1963, which — I am told — was identical with rule 2 (1) (b) of the Central Commissions of Inquiry (Procedure) Rules, 1960. This was so, because under the then extant law, the adoption of that course was essential to comply with the requirements of natural justice. Since then there has been a significant change in law. Under sub-rule (2) of Rule 2 of the 1960 Rules, every statement whether furnished under clause (a) or clause (b) of sub-rule (1) which correspond the clauses (a) and (b) of rule 5 (2) of the 1972 Rules — was peremptorily required to be accompanied by an affidavit in support of the facts set out in the statement sworn by the person furnishing the statement. Thus, the position was that all statements by whomsoever furnished, whether in response to the personal notice under cl. (a) by the Memorialists, or in response to the public notification under cl. (b) by members of the public, stood at par. The Commission could *per se* treat those affidavits, whether furnished under cl. (a) or cl. (b), as evidence in the case. This is not so under the Rules which are now in force. Under sub-rule (3) of Rule 5 of the current Rules of 1972, the obligation to file an affidavit attaches only to statements furnished in response to notices issued under cl. (a) and not to statements furnished by members of the public under cl. (b) of Rule 5 (2). The result is that while statements on affidavits furnished in response to notice under the aforesaid clause (a) can be treated by the Commission, as evidence, the bare statements furnished under cl. (b) do not *ipso facto* become a part of the evidence before the Commission. This is further clear from sub-rule (5) which makes a significant departure from the corresponding provision in Rule 3 of the repealed Rules of 1960. Under sub-rule (5), the requirements for examining statements by the Commission as a preliminary to deciding whether it is necessary to record evidence, is highlighted with specific reference to the examination of statements furnished under cl. (b). It is after such examination that the Commission will decide as to whether the evidence of any of the persons who have furnished statements under cl. (b) should be taken on affidavit or by calling him for oral examination. Irrelevant or scurrilous statements will also be weeded out or expunged after such examination and shall not form part of the record, nor will such expunged statements be open to publication. The respondents and others served with notices under cl. (a) shall have an opportunity to inspect, with the permission of the Commission, all statements furnished under clauses (a) and (b), and after such inspection they will be entitled, with the permission of the Commission, to file further and better statements on affidavit in regard to new facts or particulars appearing in the statements furnished under cl. (b). In any case, if a person is called for oral examination, or his affidavit is treated as part of his examination-in-chief, the respondents and others adversely affected by the same will be afforded an opportunity to cross-examine him in accordance with the rules of procedure devised by the Commission.

Thus, it will be seen that while the respondents and others adversely affected, are likely to be prejudiced in their defence, if they are required to file their statements under clause (a) before they had a chance to know the affidavits furnished by the Memorialists, no such prejudice will be caused to them, if the furnishing of statements by them is not postponed till after the receipt of the statements from the members of the public under clause (b). On the contrary, such postponement, will cause unreasonable delay in the commencement of the enquiry and will not be fair to the public whose interests demand that the enquiry should be conducted with due despatch and completed within the time specified in the Central Government Notification, dated February 3, 1976.

In the light of what has been said above, it is directed that notices under Rule 5 (2) (a) be first issued to the Memorialists requiring them to furnish their statements accompanied by affidavits in respect of matters specified in the notices, by the 17th day of June, 1976. All matter comprising the Commission's terms of reference set out in the Central Government Notification, dated February 3, 1976, shall be specified in the notices, or annexed thereto. Simultaneously, notices under Rule 5 (2) (a) shall issue to the seven respondents viz., Thiru M. Karunanidhi, Thiru S. Madhavan, Thiru P. U. Shanmugham, Thiru Anbil Dharmalingam, Thiru S. J. Sadiq Pasha, Thiru O. P. Raman, Thiru S. P. Aditanar and the 33 persons particulars of whom are mentioned in Annexure 'A' (who, in my opinion, must be given an opportunity of being heard), requiring them to file their statements duly supported by affidavits by the 12th of July, 1976, positively, with regard to matters specified in the notices. The Memorialists shall file seven spare copies of their statements. The seven respondents will be entitled to get one copy of each of the affidavits filed by the Memorialists. They can collect the same either in person or through a duly recognised agent or Counsel from the office of the Commission at any time during office hours after the 17th of June, 1976.

Notification under Rule 5 (2) (b) shall also be simultaneously published in the newspapers viz., 'Hindustan Times,' 'Statesman,' 'Times of India,' 'Indian Express,' 'Hindu,' 'Dinamani,' 'Swadesa Mitran,' inviting all persons acquainted with the subject matter of the enquiry to furnish to the Commission a statement relating to matters specified in the Central Government Notification, dated February 3, 1976. The last date for filing such statements in response to the notification published under cl. (b) of rule 5 (2), will be July 12, 1976.

The notices and notification shall be drawn up in accordance with the above order and in a form which accords with the statutory provisions and the rules of procedure devised by the Commission. The Secretary will forthwith put up the drafts for approval and issue.

Another point which was seriously controverted by the Counsel at this stage was about the *locus standi* of the State Government of Tamil Nadu to join as a party having a right to address the Commission and cross-examine witnesses who may be examined by the Commission.

The Commission has already made an order under s. 5 (2) of the Act directing that some responsible officer or duly recognised agent of the State Government should attend all the hearings of the Commission to assist it in requisitioning information and records, from time to time, on such points or matters as in the opinion of the Commission will be useful or relevant to the subject matter of the inquiry. This order was made in view of the fact that most of the relevant evidence consisting of official records, is in the control and custody of the Tamil Nadu Government.

On the basis of this order, Shri Vanamamalai, Advocate has appeared on behalf of the State Government before the Commission.

Mr. Chitale appearing for Thiru S. P. Aditanar, respondent contended that under the Central General Clauses Act "Central Government" means the "President" of India and the "State Government" means the "Governor" of the State; that the President has by a proclamation issued under Article 356 of the Constitution, on January 31, 1976, assumed to himself the functions of the State Government. According to the learned Counsel, as a consequence of this proclamation and assumption of functions by the President, the State Government has ceased to exist as a separate entity. It is maintained that in such a situation, the Government of Tamil Nadu is functioning only in the capacity of a subordinate or agent of the Central Government. This being the position, says Mr. Chitale, the question of the State Government appearing as a party independent of the Central Government before the Commission does not arise.

Another argument advanced by Mr. Chitale is that under s. 8-C of the Act, only three categories of parties have been given a right to address the Commission and to cross-examine witnesses; one, the "appropriate Government" which in the instant case is the Central Government; second, persons whose conduct is being inquired into or who are likely to be prejudicially affected by the enquiry, and, third, "any other person whose evidence is recorded by the Commission." It is maintained that since the State Government as such, does not fall under any of these three categories and Section 8-C is exhaustive, that Government cannot be allowed to come in as a party and exercise the same rights which can be claimed by the three categories covered by s. 8-C. It is argued that the State Government is an "inappropriate Government" and there is an implied prohibition in s. 8-C against such a Government being allowed to intrude into proceedings before an enquiry Commission set up by the Central Government under s. 3 of the Act. It is contended that what is not permitted under s. 8-C, could not be done indirectly by resorting to s. 8.

It appears to me that the first point canvassed by Mr. Chitale is wholly fallacious. Article 356 is complementary to Article 355 of the Constitution. Article 355 casts a duty on the Union, *inter alia*, to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution. It is for performance of this constitutional duty, that the President

by a Proclamation under Article 356, has assumed to himself the functions of the Government of the State of Tamil Nadu. Thus viewed, it will be clear that the President has assumed the functions of the State Government, not to put an end to the separate existence of the State Government, as such, but to ensure its functioning in accordance with the provisions of the Constitution. The Proclamation and assumption by the President of the functions of the State Government, therefore, does not have the effect of extinguishing the existence of the Tamil Nadu State or the State Government as a separate entity. The extent of the take-over of the normal functions of the State Government under the Constitution depends on the terms of the Proclamation. Wide as the terms of the Presidential Proclamation are, they do not have the effect of completely effacing the Government of Tamil Nadu, as a distinct entity, for all purposes. The decisions in *Satya Dev Bushahri v. Padam Dev and others* (1955) 1, S.C.R. 561 ; *Subhas Chandra and others v. Municipal Corporation of Delhi and another* (1965) 1, S.C.R. 350 ; *Uttam Bala Revankar v. Asst. Collector of Customs and Central Excise, Goa and another* (A.I.R. 1970 S.C. 1765) and *State Govt. of Vindhya Pradesh (now State Govt. of Madhya Pradesh) v. Moula Bux and others* A.I.R. (1962) S.C.145, cited by Mr. Chitale, are not in point. In none of them, the effect of a Proclamation made under Article 356 of the Constitution came up for consideration. I would therefore reject the first argument of Mr. Chitale.

As regards the second argument, I am inclined to agree with Mr. Chitale that at this stage, the State Government does not fall under any of the three categories enumerated in s. 8-C who can claim to be represented before the Commission, and to address arguments and cross-examine witnesses. But I am not inclined to agree with the learned Counsel that s. 8-C is exhaustive. There are no words in this section that the facility of addressing the Commission and cross-examining witnesses cannot be extended to any other person or party which does not fall under any of the categories enumerated in that section. It may be noted that s. 8-C was added by the Amendment Act 79 of 1970. Prior to that, the right to cross-examine witnesses was a matter resting entirely in the discretion of the Commission which was free to devise its own rule in regard thereto, in exercise of its powers under s. 8. In the enquiry conducted by Dass Commission against Sardar Pratap Singh Kairon, and in the enquiry conducted by Ayyangar Commission against Bakshi Ghulam Mohammad, the evidence was taken by Affidavits and no general right of cross-examination was conceded. In order to put the matter beyond doubt, Parliament has, by enacting ss. 8-B and 8-C, now conferred on two categories, namely, the 'appropriate Government' and 'every person referred to in s. 8-C,' a threefold unconditional, (namely) : (a) to cross-examine a witness other than the one produced by it or him ; (b) to address the Commission, and (c) to be represented before the Commission. A qualified right, depending upon the discretion of the Commission has been given to a third category, namely, a person whose evidence is recorded by the Commission. The Commission has a discretion to allow a person to avail of the facilities mentioned in clauses (a), (b) and (c) of s. 8-C if his evidence is recorded by the Commission. But Section 8-C does not derogate from the discretionary powers of the Commission to extend to any person or Government other than the one mentioned in s. 8-C, the facility of cross-examining witnesses, addressing the Commission and being represented before it. The source of this power of the Commission is s. 8, and is otherwise implicit in the Government notification issued under s. 3 of the Act. As pointed out by Chief Justice S.R. Dass in his Report of Inquiry against Shri Pratap Singh Kairon, the enquiry to be made by a Commission set up under the Act differs from a civil litigation and a criminal proceeding before an ordinary court of law. In a civil action, there is plaintiff and a defendant and a *lis* or issue between them which the plaintiff may choose to abandon. In a criminal case, there is a prosecutor and an accused and a charge which the prosecutor may withdraw, with or without the permission of the court as prescribed in the Code of Criminal Procedure. In both cases, the issue or charge has to be determined by the Court by judgment or an order which becomes binding and enforceable between the parties. But in an inquiry under the Act, there is no plaintiff or a prosecutor on whom onus of proving the plaintiff's case or the prosecution case rests under the law. The Act and the Notification issued by the appropriate Government under s. 3 impose a peremptory duty on the Commission to collect evidence from whatever source possible by all legitimate and fair means, bearing on the allegations comprising its terms of reference and to sift that evidence and record its findings. Excepting where the appropriate Government takes action under s. 7, the Commission cannot divest itself of the duty of making the enquiry to arrive at the truth and to report its findings to the Government.

If a party, Government or a person other than the one mentioned in s. 8-C, is vitally and *bona fide* interested in the enquiry and the Commission thinks that the participation of that person or Government in the proceeding would facilitate its task of arriving at the truth or is otherwise necessary for a complete and effectual accomplishment of the task entrusted to it, it will be justified to allow, in its discretion, that person or Government to join the proceedings and avail of all the facilities enumerated in cls. (a), (b) and (c) of s. 8-C. In this connection it is noteworthy that on the basis of an order made under s. 5 (2), the State Government of Tamil Nadu is represented before the Commission by its duly recognised attorney, Shri Vanamamalai, Advocate. But that order made under s. 5 (2) does not *per se* concede a right to Shri Vanamamalai to cross-examine witnesses or to address the Commission. But there is no doubt that in an appropriate situation, the Commission can, in its discretion, if the public interests so require, extend to the State Government the facility to do any of the acts and things mentioned in cls. (a), (b) and (c) of s. 8-C.

In the view I take I am fortified by an order passed by Mr. Justice L. N. Chhangani on February 17, 1973 who was one-man Commission appointed by the Central Government under s. 3 of the Act to enquire into certain allegations made by Sarva Shri Satya Pal Dang, and Trilochan Singh Riyasti against the ex-Ministers of Punjab Government. The Memorialists filed an application requesting the Commission that the State of Punjab should be asked to play an active role and produce all evidence for and against the allegations levelled by them. After hearing Counsel on both sides, Mr. Justice Chhangani passed an order, the material part of which reads as under :—

“ Having regard to the stand taken by the Counsel for the Memorialists and after taking into account the public interests, the Commission thinks it proper to issue directions to the Counsel for the Punjab State to indicate to the Commission as early as possible the evidence — oral or documentary — in their knowledge and possession for or against the allegations and to produce the same before the Commission or in the alternative, to explain its inability to do so ”

The Commission, however, did not absolve the Memorialists from their responsibility to file proper affidavits and documents in their possession in support of the allegations.

Be that as it may, the appropriate stage for deciding whether the Commission should or should not allow the State Government Counsel to address the Commission and cross-examine witnesses has not yet reached. That stage will arrive when after an examination of all the statements received in response to the notices/notification under rule 5 (2), the Commission decides to take evidence. At that stage, the Commission will be in a better position to assess whether or not the enquiry can be satisfactorily carried on without the active participation and assistance of the State Government and its Counsel.

As regards the other procedural suggestions made by Mr. Bhushan, the same have been noted in the record of proceedings and they will be considered at the appropriate occasions.

Dated, New Delhi, the 21st May, 1976.

(Sd.) R. S. SARKARIA,
Commission of Inquiry.

ANNEXURE 'A'

1. Thiru Maran
2. Thirumathi Dayalu Ammal.
3. Thiru M. K. Muthu.
4. Thiru M. K. Stalin.
5. Thiru M. K. Alagiri.
6. Thirumathi Dharmambal.
7. Thiru Kapali.
8. Thiru Amirtham.
9. M/s. Satyanarayana Bros.
10. M/s Wallace Cartright.
11. Thiru M. Vaidyalingam.
12. Thiru Thandavaroya Gounder.
13. Thiru Ramalinga Gounder.
14. Thiru Kasturi Chettiar.
15. Thiru Pandurangan.
16. Thiru Rajagopal.
17. Thiru Babu.
18. Thiru N. Jayaraman.
19. The Indian Agricultural Aviation Association.
20. Thiru Chandi Prasad Khemka.
21. Thiru S. Kandappan.
22. Thiru Rangaswami Gounder.
23. M/s. J. K. K. Angappa Chettiar & Co.
24. Thiru Varadaraja Pillay (Since deceased)—son to be noticed.
25. Thiru P. K. Nambiar, I.A.S.
26. Thiru R. Pasupathy, I.A.S.
27. Thiru V. S. Thyagaraja Mudaliar.
28. Thiru A. L. Srinivasan.
29. M/s. S. Ahmed & Co., Contractors.
30. Thiru Rajamanickam.
31. Thiru P. Manickavasagam.
32. Thiru Kattur Gopal.
33. Thiru N. Mahalingam.

(Sd.) R. S. SARKARIA.
21—5—1976.

APPENDIX III

Raj Bhavan, Madras, on 29th May, 1976 with officers of the C.B.I. and of the State Government, whose services have been placed with the Commission for conducting investigation pertaining to the inquiry.

29th May, 1976.

Present : Shri Justice R. S. Sarkaria
Shri K. A. Ramasubramaniam,
Secretary to the Commission of Inquiry.

C. B. I. Officers

1. Shri Rajagopalan, S.P.
2. Shri Sriramulu, D.S.P.
3. Shri Unnikrishnan, D.S.P.
4. Shri Narasimhan, D.S.P.
5. Shri R. K. Swami Naidu, D.S.P.
6. Shri Kothandapani, Inspector
7. Shri Venugopal, Inspector.

State Government Officers

1. Shri Ganesan, S.P.
2. Shri J. E. Sriramulu, D.S.P.
3. Shri Gangadharan, D.S.P.
4. Shri Samiraj, Inspector.
5. Shri Manoharan David, Inspector.

Shri V. R. Lakshminarayanan, Joint Director, C.B.I. and Shri C. M. Radhakrishnan Nair, D.I.G., C.B.I., were also present.

At the outset the Commission explained to the officers, the nature of their functions and the scope of their powers with reference to the relevant provisions of the Commissions of Inquiry Act, 1952. Their attention was first drawn to sub-s. (1) of s. 5-A of the Act which indicates that the officers whose services the Commission utilises for the purpose of conducting any investigation pertaining to the inquiry, with the concurrence of the Central Government or the State Government, as the case may be, are to act as auxiliaries to the Commission. The investigation conducted by them being subject to the direction and control of the Commission, is in a way, an investigation conducted by the Commission itself. It is essential that such investigation should be absolutely fair, impartial and upright, as any slur cast on the investigating agency or any officer whose services are being utilised by the Commission, is likely to reflect on the Commission itself.

It was explained to the officers that the powers which they can exercise under s. 5-A of the Commissions of Inquiry Act have to be distinguished from the powers of investigation under the Code of Criminal Procedure. The general powers which can be exercised by such officers or agency under the direction and control of the Commission are provided in sub-s. (2) of s. 5-A. These powers are :

- (a) to summon and enforce the attendance of any person and examine him ;
- (b) require the discovery and production of any document ; and
- (c) requisition any public record or copy thereof from any office.

The power under cl. (a) of s. 5-A (2) is substantially the same which is given by ss. 160 and 161, Code of Criminal Procedure, 1973 to a Police Officer making an investigation under the Code. Although the aforesaid cl. (a) does not, in terms, say that the investigating officer may reduce into writing any statement made to him in the course of an examination, it is implicit therein that the investigating officer may reduce into writing any statement made to him in the course of an examination under this clause. But such statement may not be recorded on oath. However it would be advisable to get the signature of the person examined on such statement. The prohibition contained in s. 162, Cr.P.C. against signing of such statements by the person making it is not applicable to a statement recorded under cl. (a) of s. 5-A (2) of the Act. If the person examined volunteers to give an affidavit in support of his statement, he may be directed to send his affidavit duly sworn before a Magistrate of the First Class or other competent authority, to the Commission directly.

With regard to the discovery and production of documents and requisitioning of any public record, if the same are voluntarily or without objection handed over to the investigating officer by the person in control or custody thereof, the investigating officer is competent to take them into custody if he finds them to be relevant for the purpose of investigation. If there is any refusal, reluctance or objection to the discovery or production of such document or record, the investigating officer should report the matter forthwith to the Commission for directions. If any claim of privilege is made by the person in custody or control of the record, the investigating officer should refer the same to the Commission for appropriate directions.

The officers present at the meetings were further told that their powers to search and seize documents or property on their own were not the same as the powers of a Police Officer investigating an offence under the Code of Criminal Procedure. In this connection their attention was drawn to s. 5-(3) of the Act which provides :

“ The Commission or any officer, not below the rank of a gazetted officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any books of account or other documents relating to the subject matter of the inquiry may be found, and may seize any such books of account or documents or take extracts or copies therefrom, subject to the provisions of section 102 and section 103 of the Code of Criminal Procedure, 1898, in so far as they may be applicable.”

If an investigating officer has reason to believe that books of account or other documents relating to the subject matter of the enquiry may be found from a particular place in the possession and control of any person and that the same person is not willing to produce the same or that such evidence is likely to disappear if immediate search and seizure is not made, the proper course for him would be to make a reference to the Commission for orders under sub-s. (3) of s. 5.

In short, if search or seizure of any document or record for the purpose of investigation entrusted to an officer for the purpose of enquiry becomes necessary, specific authorisation from the Commission under s. 5 (3) of the Act should be invariably taken, well in advance.

If any reluctance or resistance to the discovery or production is encountered and coercive process is deemed necessary, reference should be made to the Commission for appropriate orders.

It was also explained to the officers that any statement or material procured by them under clauses (a), (b) and (c) of s. 5-A (2) carries with it the same immunity which attaches under s. 6 to a statement made in the course of giving evidence before the Commission. This has been made clear in sub-s. (3) of s. 5-A. Consequently, if there is reluctance on the part of any person to disclose the truth on account of fear or apprehension, that such disclosure may incriminate him and be used against him, the investigating officer can dispel that apprehension, that by explaining to him the protection assured under s. 6. However, the limits of such protection should be clearly understood. Such protection does not afford an absolute immunity to the witness from any civil or criminal proceeding relating to the subject matter of his statement. The prohibition is only against the *use* of such statement made under s. 5-A (2) before the investigating officer or before the Commission in any other civil or criminal proceeding. Here again this immunity is subject to the rider that such statement can be used in a prosecution for giving false evidence by such statement.

Clarification was sought by some officers as to whether they were required to examine the respondents and their witnesses or evidence produced by them and whether the final report to be submitted by them should contain the findings of the investigating officer recorded after a consideration of the evidence adduced by both sides. It was explained to them that they were competent to summon and examine all persons including the respondents. It was impressed on them that before commencing the examination of respondents or any witness produced by them, they should first collect all the evidence whether produced by the memorialists or others in support of the charges and after collecting such evidence they should submit the same to the Commission with an interim report preferably by the 12th of July, 1976 or in any case not later than July 26, 1976, that is the next date fixed for the sitting of the Commission. Such interim report or reports should be made by the Senior Officer and should contain the gist of the evidence together with a list of important witnesses and their statements, a list of the documents and their relevance. The evidence should be sorted out and arranged charge-wise and it should be subdivided and related to every important ingredient of a particular charge. Before proceeding to examine the respondents or the evidence, if any produced by them, the officers should seek further directions from the Commission.

The submission of final report or reports containing discussion of the evidence and the conclusions reached by the investigating officers, will be subject to any further direction issued by the Commission after consideration of the interim report.

Officers of the C.B.I. headed by Shri Rajagopalan, S.P. and the officers of the State Government investigating agency of the State, led by Shri Ganesan, S.P. informed the Commission that as a matter of convenience they have decided that allegations which are the subject matter of certain charges such as Sl. Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11-A, 12, 13-A, 14, 15, 17, 18 and 20 are being investigated by the C.B.I. team and Sl. Nos. 11-B, 13-B, 16, 19, 21 to 28 are being investigated by officers of the State investigating agency. The Commission approved of the arrangement and left this matter to the discretion and internal adjustment of the officers heading their respective teams.

In conclusion it was re-emphasised that the investigating officers assisting the Commission should never allow their zeal to outrun their discretion or to overstep the bounds demarcated by the statute. Whenever they experience any difficulty or feel any doubt about any matter, they should seek the advice and guidance of the Commission.

(Sd.) R. S. SARKARIA
Commission of Inquiry.

APPENDIX IV

SARKARIA COMMISSION OF INQUIRY

MISC. PETITION No. 41/SCI/76

(Application by Thiru M. Karunanidhi and 5 others for expunction of paragraphs 1, 3, 4, 7 and 9 from the affidavit dated 16-6-1976 of Shri M. Kalyanasundaram, Memorialist.)

ORDER

This is a petition under Regulation 23, framed by the Commission, for expunction of allegations in paragraphs 1, 3, 4, 7 and 9 of the affidavit of Shri M. Kalyanasundaram (hereinafter called the Memorialist).

The burden of the arguments of Shri Shanti Bhushan, Counsel for the Petitioners is that in the allegations in question the Memorialist has completely jettisoned his original case adumbrated in the Memorandum to the President ; and introduced a totally different, new and inconsistent case which is outside the scope of the Commission's terms of reference.

Shri Harish Chandra, Counsel for the Central Government submits that owing to a clerical mistake in the Memorandum, the name of the contractor was mentioned as 'S. Ahmed & Co.', and this mistake was inadvertently repeated in the Notification ; that all that the Memorialist has now done is that he has corrected that mistake in his affidavit. It is pointed out that this correction does not change the substance of the imputation, nor the person against whom it was levelled; that the person against whom the original allegation was made, though not named could easily be identified as the then Minister-in-charge of the Department of (PWD) Road; more so, when the contract was of the value of 85 lakhs. It is pointed out that the then Minister-in-charge of the Public Works Department (Roads) was none other than Shri Sadiq Pasha, petitioner. According to the Counsel, the matter specified at Serial No. 20 in the Notification conveys two imputations :

- (i) That the contract for the construction of this Kodaikanal—Palani Road was given at a cost of Rs. 85 lakhs, which was an unusually large amount ;
- (ii) That giving of a huge advance in anticipation of the work to be done, to the contractor was an irregular act, smacking of favouritism.

It is maintained that the matter specified at Serial No. 20 taken in conjunction with clause (b) of Para 2 of the Notification, shows that the "definite matter of public importance," which is required to be inquired by the Commission, is, any irregularity, impropriety or illegality committed by Shri Sadiq Pasha, the then Minister-in-charge of the Public Works Department in relation to this contract of road construction. The gravamen of Allegation No. 20 being the contract, all collateral facts showing any irregularity, impropriety or illegality in relation to this contract would be within the scope of the terms of reference set out in the Notification.

I have carefully considered the contentions canvassed on both sides, but am unable to accept the arguments advanced by the Counsel for the Central Government. The whole problem resolves itself into the issue : whether the case now sought to be made out by the Memorialist in his affidavit, is a complete departure from what is specified at Serial No. 20 in the Notification ? In my opinion, the answer to this question must be in the affirmative. The matter set out at Serial No. 20 reads as under :

"The KODAIKANAL TO PALANI ROAD

The construction of the said road at a cost of 85 lakhs was given to a firm called S. Ahmed & Co., and huge sums of money have been advanced to S. Ahmed & Co. In Coimbatore, for the construction of a overbridge the work was again given to this S. Ahmed & Co. In this case also huge advances have been given to the contractors. The necessity for grant of such huge advances requires serious investigations."

A plain reading of what has been quoted above shows that the only imputation specified therein is that the contractor, S. Ahmed & Co has been given huge sums of money, in advance.

The implication is that this was an act of favouritism ; and a " serious " investigation is demanded only into the " *necessity* for the grant of such huge advances." The implication was that the huge advances were unusually large in proportion to the estimated cost of 85 lakhs of the construction of the road. The act of irregularly giving this huge advance, was the gravamen of the charge in the Memorandum submitted by the Memorialist to the President.

It will not be out of place to recall that in reply to this Memorandum, Shri Karunanidhi, while denying the charge, had pointed out that this contract was given to M/s. Nagapattinam Import and Export Corporation and not to S. Ahmed & Co. It can be presumed that before issuing this Notification constituting the Commission, the Central Government must have gone through that record of the proceedings of 1972. Despite this, the Central Government have not thought it fit to substitute " Messrs. Nagapattinam Import and Export Corporation " for " S. Ahmed & Co. ", as the firm or persons to whom favour was shown in the shape of advancing huge sums of money. Now, by means of the allegations in question, the Memorialist in his affidavit, dated June 16, 1976, has given up his original case with regard to the propriety, irregularity or illegality of advancing huge sums to the contractor, S. Ahmed & Co. In the affidavit, ' S. Ahmed & Co.' has been replaced by " M/s. Nagapattinam Import & Export Corporation." Originally, there was no allegation that some irregularity, impropriety or illegality had been committed *in giving* the contract for a consideration of Rs. 85 lakhs to the contractor. The bare mention that the contract was to cost Rs. 85 lakhs, does not convey any sense of misconduct *in giving* the contract for a consideration of Rs. 85 lakhs. Now, in the affidavit, it is alleged : that, at first, " the only tender submitted by M/s. Madras Concrete Works was rejected because of oblique motives." " After the lapse of some time fresh tenders were called for and among the tenderers was M/s. Nagapattinam Import and Export Corporation also. Their tender was accepted even though it was not the lowest tender. A pretence of reducing a sum of Rs. 10,000/- was made in the amount quoted by them merely for the purpose of giving an appearance of the whole transaction being *bona fide*. " The reason for the acceptance of the tender of M/s. Nagapattinam Import & Export Corporation as put forward was that they had previous experience in such work. The truth is that they had no previous experience in such work at all not to speak of experience in putting up a road in Ghat Section which requires special skill and knowledge. It was also falsely stated that the rival tenderer whose tender was entitled to acceptance had totally no experience at all, in laying the road." (Para 3).

" The basis on which tender was accepted was that the total length of the road to be laid was 55 kms. The tender of Nagapattinam Import & Export Corporation was Rs. 45 lakhs. Ultimately, it was found that the entire estimate was totally wrong and the road to be laid was only for a distance of 42 kms. To start with it was made out as if there was more than 100 hair-pin bends. But in reality, there were less than one-tenth of what was put forward at the outset." (Para 4).

Then, in para 7 of the affidavit, it is alleged that :

" Thiru Sadiq Pasha has abused his office and position in the matter of giving this contract to M/s. Nagapattinam Import & Export Corporation in order to help one Mr. Ariff, a close friend and associate of his and the Chief Minister Thiru Karunanidhi. It was further alleged that it was this Ariff who had struck the deal with M/s Nagapattinam Import & Export Corporation in which he became a partner later on."

Further in paragraph 9 it was stated that :

..... " in due course Mr. Ariff became a partner of the firm and he admitted a few other D.M.K. members into the partnership. But soon, Thiru Sadiq Pasha was shifted from the P.W. Department and Thiru P. U. Shanmugham took the portfolio. Even though there was change in the Minister there was no change in the windfall to be reaped by Ariff and his associates in the name of his political party he made P.U. Shanmugham also show unusual favouritism to him. But then P. U. Shanmugham himself came to interest himself in the contract for his own self-interests. M/s. Nagapattinam Export & Import Corporation sought revision of the rates on grounds of escalation of prices. The Chief Engineer and other officers objected to any revision of rates for according to them the contractors were responsible for very inordinate delay as they did not commence the work in time and started the work after a very long time. But Thiru P. U. Shanmugham ably assisted by civil servant by name Mr. Ramachander I.A.S. who was then Secretary to the P.W. Department came to the rescue of the said contractors. In a most detestable manner, the Secretary Thiru Ramachander has contributed to maintain double file relating to the same matter and has deliberately helped the Minister revise the rates with the result that the scheme had caused the Government nearly 90

lakhs of rupees all of which has been paid out to the said contractor. The conduct of Thiru Ramachander, I.A.S. in maintaining double file is highly improper, reprehensible and should be condemned."

From the quotes above, it is clear as day light that the sole imputation which was originally levelled viz., the alleged favour shown to S. Ahmed & Co. by advancing a huge sum, has now been given a complete go-by. In its place, new and different charges of misconduct to favour M/s. Nagapattinam Import and Export Corporation have been introduced against other persons, including two former Ministers and one Government servant, Thiru Ramachander, I.A.S. By no stretch of reasoning can it be said that these new allegations arise from the original charge or are incidental to the same. Such a *volte face* would be extremely unfair to the persons against whom these new imputations have been levelled. Moreover, the new allegations are inconsistent with the case as originally set up.

For these reasons, I am of opinion that the questioned allegations in paragraphs 1, 3, 4, 7 and 9 of the affidavit, dated June 16, 1976, of the Memorialist are irrelevant and beyond the scope of the terms of reference specified in the Government Notification. I, therefore, direct that they be expunged from the record.

Dated, the 28th August, 1976.

(Sd.) RANJIT SINGH SARKARIA,
(R.S. SARKARIA),
Commission.

APPENDIX V

SARKARIA COMMISSION OF INQUIRY

ORDER

Originally, in the notices issued to the respondents and other affected persons, it was directed that they would file their counter-affidavits, complete in all respects in accordance with the rules devised by the Commission which *inter-alia* require that the names and particulars of the witnesses and the documents on which a deponent relies for a statement in his affidavit, must be disclosed in his affidavit. Thereafter from time to time, extensions have been granted to the respondents to file their counter-affidavits/additional affidavits, complete in all respects. At the sitting of the Commission which was held on August 25, 1976, respondents were directed to file their complete affidavits by the 10th September, 1976. Subsequently, notices were served on the parties through their Counsel that they should submit the lists of their witnesses whom they wish to be called for oral examination, by the 10th of September, 1976. In my order dated August 25, 1976, which was pronounced towards the close of the sitting of the Commission and a copy of which was later supplied to the Counsel for the parties, including the respondents, it was directed as follows :

"The respondents shall now file their supplementary counter-affidavits not only in regard to the Allegations specified in the Government Notification, dated 3rd February 1976, constituting the Commission (and reproduced in the Notices served on them), but shall also reply to the statements on affidavits received from the members of the public, consequent to the Notification published under Rule 5 (2) (b) of the Commission of Inquiry (Central) Rules, 1972, and also with regard to the statements and reports recorded pursuant to the orders of the Commission under s. 5-A of the Act by the Investigating Officers acting under the direction and control of the Commission, in regard to Allegations (Sl. Nos. 3, 11(a), 11 (b), 12, 15, 16, 17, 19 and 22. Counsel for the parties were duly informed about the receipt of these reports. They were also informed that they could inspect these reports and take thereof as full notes as possible, with the assistance of their steno-typists, stenographers, or with the aid of a mechanical tape-recorder, at all convenient hours during working days either in the office of the Officer on Special Duty, Shri B. Vijayaraghavan at Madras, or, in the office of the Commission at New Delhi."

In answer to a question put by me, Shri Ramaswamy, Counsel for the respondents admitted that they had fully inspected and copied out the reports of the Investigating Officers with the aid of typists but this copying out was completed only on the 4th September, 1976 ; that since the reports run into about 1,200 pages, it was not possible for them to scrutinize the same carefully to enable them to file a complete affidavit or formulate their objections with regard to the statements and reports recorded by the Investigating Officers.

Mr. Shanti Bhushan, Senior Counsel appearing for the respondents (excepting Shri Si. Pa. Aditanar), submits that further proceedings be adjourned and further time be granted to them for furnishing their supplementary affidavits wherein they would plead in respect of Allegations

Nos. 11 (b) and 17 also. Counsel adds that tomorrow they might file another petition objecting to the validity of the record prepared by the Investigating Officer. It is urged that these reports cannot be treated as evidence because the Commission cannot further delegate its functions which have been entrusted to it under the Government Notification constituting the Commission. At the most, it can take the assistance of such Investigation Officers for investigating technical matters concerned in any of the Allegations, such as, appointment of auditor for checking accounts etc. But in no case, proceeds the argument, is the Commission competent to constitute a sub-Commission for performing the functions which should be performed by it, only. Counsel therefore, submits that unless and until the Commission decides this objection which will be raised by a regular petition to be presented tomorrow or thereafter, further proceedings should be postponed. He also commended the procedure adopted by Ayyangar Commission which inquired into the allegations against Bakshi Ghulam Mohammad. That Commission had divided the witnesses into two categories. First, those whose evidence was purely formal or based on documents or record. Second, those whose evidence was not based on any such record. Mr. Bhushan points out that the evidence of the first category of witnesses was taken merely on affidavits and they were not called for oral examination, but orders were passed in respect of witnesses in the second category for their oral examination.

When I inquired from Mr. Shanti Bhushan as to what further time they wanted to file their complete affidavits (supplementary) in regard to all the matters specified in my order dated August 25, 1976, he in consultation with his colleague, Shri Ramaswamy asked for two weeks further time for doing the needful. This request is substantially acceded to despite the opposition of Shri Raman, learned Additional Solicitor-General who is appearing for the Central Government.

I further asked the Counsel for the parties as to why they had not submitted the list of their witnesses in accordance with my previous order, which was communicated to them through their Counsel. Thereupon Shri Ramaswamy placed before me a list of about 200 persons whom they want to be examined by the Commission. All persons in this list (excepting Mr. Cambata) are those who have already furnished their affidavits before the Commission and the statements of most of them pertaining to Allegations Nos. 3, 11-A, 11-B, 12, 15, 16, 17, 19 and 22 have also been recorded by the Investigating Officers assisting the Commission.

Mr. Palpandian, Counsel for Shri Kalyanasundaram, Memorialist, informed the Commission that the Memorialists are also submitting a combined list of witnesses whom they wish to be called for oral examination or cross-examination. They have accordingly submitted a list for summoning of 26 witnesses. The Central Government have not submitted any list of witnesses for oral examination/cross-examination of any witness.

Mr. Shanti Bhushan, vehemently urged that the Commission must examine all the witnesses so that the respondents may exercise their right to cross-examine them under s. 8-C of the Commissions of Inquiry Act and that it would be highly unfair to accept as evidence either the opinion of the Investigating Officers expressed in their reports, or to rely upon the records prepared by them. It is emphasised that if the Commission declines the request for oral examination, that would be extremely prejudicial to the respondents. He wants the Commission to give a ruling so that his clients should know where they stand.

By separate order of date, I have condoned the delay in filing these lists of witnesses. The same will be scrutinized and taken up for further consideration after due notice to the parties.

Mr. Raman stoutly opposed the contentions advanced by Shri Bhushan. He commended the procedure adopted by Das Commission (who inquired into the allegations against Shri Pratap Singh Kairon the then Chief Minister of Punjab) and the Khanna Commission (who inquired into the charges against former Ministers of Orissa). These Commissions had taken the entire evidence on affidavits and counter-affidavits and not by oral examination of witnesses. Mr. Raman explained that the object of the Commission is fact finding and the respondents are not in the position of accused persons. Therefore, the analogy of Criminal Procedure Code is wholly inapt. Mr. Raman submitted that s. 5-A was introduced by an amending Act in 1971 and the previous Commissions which were constituted before the insertion of s. 5-A did not have the advantage of availing the facility provided therein. The Investigating Officers assisting the Commission have been working under its control and direction. The statements recorded by them stand on the same footing as the statements recorded by the Commission, itself. This, according to the Counsel, is clear from a bare look at sub-s. (3) of s. 5-A which provided that "the provisions of section 6 shall apply in relation to any statement made by a person before any officer or agency whose services are utilised under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission."

Section 6 lays down that "no statement made by a person in the course of giving evidence before the Commission shall subject him, to or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement."

Mr. Raman further submitted that in any case, the objection intended to be filed by the respondents with regard to the validity of the reports of the Investigating Officers is premature because the stage for making the statements recorded by the Investigating Officers as part of the evidence, has not yet arisen. Even if the Investigating Officers have expressed any opinion on the statements recorded by them, that opinion or conclusion is not binding on the Commission which has yet to satisfy itself under sub-s. (5) of s. 5-A about the correctness of the facts stated and the conclusions, if any, arrived at in the investigation reports, Counsel further maintained that in this inquiry as to the correctness of the investigation reports and records prepared by the investigating agency, it is not necessary to examine witnesses because almost all the persons whose statements were recorded by the Investigating Officers, had earlier submitted their affidavits to the Commission, much before the preparation and submission of the reports and the Commission can by a comparison of those statements or affidavits with the statements recorded by the Investigating Officer, fully satisfy itself about the correctness of the record prepared by the Investigating Officers. Counsel further pointed out that the respondents have been seeking extensions of time, again and again for filing their counter-affidavits or additional affidavits or supplementary affidavits and their procrastinating conduct disentitles them to the further indulgence of the Commission. Counsel warned that if the Commission starts recording evidence of all the witnesses which may be cited by the parties, it will land itself in interminable proceedings which may not see their end even in two years. The object of the Commission emphasises the Counsel, in that event, would be frustrated. The Commission must finish its task with utmost despatch and that is possible only if the evidence is taken on affidavits and counter-affidavits. In any case, submits the Counsel, if the Commission thinks that it is absolutely necessary in the interest of justice to allow cross-examination in order to test the affidavit-testimony of any person, it should allow it to be done on interrogatories in accordance with rule 16 devised by the Commission.

I entirely agree with the scope and interpretation of s. 5-A, as explained by the learned Additional Solicitor-General. There is absolutely no question of the Commission delegating its functions to any investigating agency.

It may be noted that at the first sitting of the Commission held on the 14th May, 1976, the parties were informed that the Commission was utilising the services of the investigating agencies of Central Government (C.B.I.) and the State Government as per orders dated 10-5-1976 and 13-5-1976 and the lists of the officers of those agencies who were assisting the Commission under its direction and control were handed over by the Secretary to the Commission under my orders, to M/s. Ramaswamy and Vineet Kumar, Advocates for the respondents. The two teams of officers who were then investigating were :

C. B. I.

1. Shri Rajagopalan,
2. Shri Sriramulu, D.S.P.,
3. Shri Unnikrishnan, D.S.P.,
4. Shri Narasimhan, D.S.P.,
5. Shri Kothandapani, Inspector.
6. Shri Venugopal, Inspector.

STATE GOVERNMENT

1. Shri G. Ganesan, S.P.,
2. Shri J. R. Sriramulu, D.S.P.,
3. Shri T. Gangadharan, D.S.P.,
4. Shri K. Samiraj, Inspector.
5. Shri Manoharan David.

Subsequently with the permission of the Commission, senior officers in charge of both the teams associated with them in the investigations, the following officers :

C.B.I.

Shri R. K. Swami Naidu, D.S.P.

STATE GOVERNMENT

1. Shri G. S. Chelladurai, D.S.P.,
2. Shri K. Ramalingam, D.S.P.,
3. Shri Dasaratharaman, Inspector,
4. Shri J. Jeenadathan, Inspector,
5. Shri R. Seshadri, Inspector,
6. Shri M. Balakrishna Menon, Inspector.

On the 29th May, 1976, I explained to all the officers of the investigating agencies the nature of their functions and the scope of their powers with reference to the relevant provisions of the Act. A copy of the minutes of that meeting may be supplied to any party on request. In spite of the fact that respondents were fully aware that the Commission was utilising the services of the investigating agencies of the Central Government and the State Government under s. 5-A of the Commissions of Inquiry Act, no objection has ever been taken with regard to this matter so far. Even today, Shri Shanti Bhushan has expressed that they will file an objection petition tomorrow or thereafter. The arguments of Shri Shanti Bhushan, that the Commission has delegated its functions to the investigating agencies has been taken as an after thought, *i.e.*, after they have inspected the investigation reports, and it is unfounded and imaginary. Moreover, it is impossible for the Commission to predicate what precise objection will be taken in the intended objection petition and it is not possible to express any final opinion on a mere hypothetical basis.

After hearing the arguments advanced on both sides, I am of opinion that it is necessary to examine, orally, the crucial witnesses in the first instance pertaining to Allegations Nos. 11 (a), 11 (b) and 17 only. I have selected in the first batch, apart from the Investigation Officers *viz.*, Shri K. A. Rajagopalan, Shri Narasimhan and Shri K. Ramalingam, D.S.P., 17 other material witnesses. The names of these witnesses are given in Schedules 'A' and 'B'. It is noteworthy that 14 out of these 17 witnesses are those whose names prominently figure in the list filed by the respondents, whom they would like to be called for oral examination. Incidentally, to that extent, the request of the respondents for oral examination of witnesses stands conceded. The question of summoning or not summoning the rest of the witnesses mentioned in the list filed by the respondents, and in the list filed on behalf of Shri Kalayanasundaram—Memorialist, will, as already stated, be considered after the examination of the witnesses mentioned in Schedules 'A' and 'B'. The examination of the witnesses mentioned in Schedule 'A' will start on the 20th September, 1976 at Madras, and take place as far as may be, in the order and on the dates indicated therein. This time schedule is tentative and is liable to adjustment according to the exigencies of the situation. After the examination of the first batch of witnesses in Schedule 'A', examination of the witnesses in Schedule 'B' will be taken up according to the programme to be notified in due course.

In the meantime, the Secretary shall scrutinise the lists of witnesses filed on behalf of the respondents and Shri Kalyanasundaram to ensure that it is in accordance with the rules framed by the Commission, and, if any deficiency is found, direction shall issue from the Commission to the party or parties concerned to make good the same before the end of this month.

Summons to the witnesses mentioned in Schedule 'A' shall issue forthwith.

MISCELLANEOUS PETITION NO. 52/SCI/76

This petition has been submitted by Shri Aditanar, requesting for further extension of time to file his counter-affidavit. He is concerned in Allegation Serial No. 23 (1)—Investigation Report with regard to this Allegation is expected to be received by the 15th September, 1976. It will be fair to further extend the time for filing Shri Aditanar's counter-affidavit so that he may have two weeks more from the date on which the investigation report is received and a notice of the receipt of the same is issued to his Counsel. Tentatively, he is directed to file his counter-affidavit, complete in all respects, before or on the 30th September, 1976.

There is another relief asked for in paragraph 4 of his affidavit, dated September 9, 1976, enclosed with the above mentioned petition for making available certain records for inspection. Shri Vanamamalai, Counsel for the State of Tamil Nadu, submits that these records are not in

the custody or control of the State Government and, therefore, this request of the petitioner is misconceived. Shri Vanamamalai has been asked to file a written reply to this request by the 16th of September, 1976.

The substance of this order was announced at the sitting of the Commission in the presence of the Counsel for the parties attending. This detailed order has been dictated immediately after the sitting. A copy of this order be sent to the Counsel for the parties according to the practice of the Commission.

Dated, New Delhi, the 11th September, 1976

(R. S. SARKARIA),
Commission.

SCHEDULE 'A'

Witnesses to be called for oral examination under sub-section (5) of section 5-A of the Commissions of Inquiry Act, 1952, at Madras.

<i>Sl. No.</i>	<i>Allegation No.</i>		<i>Name of Witness</i>	<i>Date</i>
1.	11 (b)	Aerial Spraying	Shri K. A. Rajagopalan, Supdt. of Police, C.B.I., Madras.	20-9-1976
2.	11 (a) & 22	Nathan Publication Misuse of office by Shri Dharma- lingam	Shri K. Ramalingam, Dy. Supdt. of Police, State Government of Tamil Nadu.	20-9-1976
3.	17	Sugar Scandal	Shri Narasimhan, Dy. Supdt. of Police, C.B.I., Madras.	20-9-1976
4.	11 (b)	Aerial Spraying	Shri V. Rajagopal	21-9-1976
			Shri R. H. Captain	22-9-1976
			Shri K. N. A. Krishnan	23-9-1976
			Shri S. A. Ramachandran	24-9-1976
			Shri H. P. Rao	25-9-1976
			Shri R. S. Cambatta	28-9-1976/ 29-9-1976
5.	17	Sugar Scandal	Shri Maruthai Pillai	27-9-1976
			Shri S. Jayaraman (M/s. Parry & Co.)	28-9-1976
			Shri S. N. Lal (Deccan Sugars)	28-9-1976

SCHEDULE 'B'

Witnesses to be called for oral examination under Section 5-A, Sub-section (5), of the Commissions of Inquiry Act, 1952, at Madras.

<i>Sl. No.</i>	<i>Allegation No.</i>	<i>Name of Witness.</i>
1.	11 (a)—Nathan Publications	Shri M. T. Paul.
2.	17 —Sugar Scandal	Shri T. L. Raghavan of Kotharis. Shri L. Muthiah of M/s. Madura Sugars. Shri Swaminathan of South India Sugars. Shri Ramakrishnan of Thiru Arooran Sugars. Shri Ganesan of M/s. Aruna Sugars. Shri Chokalingam of M/s. Sakthi Sugars. Shri T. V. Krishnamurthi of M/s. Madura Sugars.

Sd. RANJIT SINGH SARKARIA.

APPENDIX VI**SARKARIA COMMISSION OF INQUIRY****ORDER**

On September 14, 1976, Respondents Sarvashri M. Karunanidhi, V. R. Nedunchezian, P. U. Shanmugham, S. Madhavan, S. J. Sadiq Pasha, Anbil Dharmalingam and O.P. Raman filed two petitions registered as Misc. Petitions 54 and 55/SCI/76 in the office of the Commission at New Delhi. The relief sought in Petition No. 54/SCI/76 was that "the investigation reports and statements recorded therein may be taken off the record and the Commission should decide the matter without any reference to them."

Final orders on this petition were deferred by me by announcing this short order on September 20, 1976 :

"The objections raised in this petition are premature. The stage for considering, whether the investigation reports and records prepared by the investigating officers, should be made a part of the record of the Commission, and used or treated as such, has not yet arisen. That stage will arise only after the Commission completes proceedings in relation to any definite charge or charges under enquiry, viz., the taking of evidence and the enquiry under sub-s. (5) of s. 5-A of the Act. In the instant case, the evidence of all the witnesses examined by the investigating officers in respect of allegation 11 (b) "Aerial Spraying," is sought to be taken either by oral examination, or by affidavits and counter-affidavits under s. 4 (c) of the Act. Such proceedings will also, incidentally serve the purpose of the inquiry envisaged by sub-s. (5) of the Act. Orders on Petition No. 54/SCI/76 are therefore reserved and deferred till after the completion of the taking of evidence by the Commission in any of the modes permissible under the Act and the Rules in respect of Allegation 11 (b)."

By another order made on the same day I had called upon all the persons purportedly examined by the investigating officers under s. 5-A (excepting Shri S.A. Ramachandran, who had already been called for oral examination, and who had not already filed an affidavit before the Commission), to file their affidavits with regard to the relevant facts in their knowledge pertaining to Allegation 11 (b) (Aerial Spraying) by the 29th September, 1976 and thereafter, the respondents were also given an opportunity to file their affidavits-in-opposition and those of their witnesses by the 12th October, 1976.

The stage for deciding the question raised in Petition No. 54/SCI/76 has therefore not yet arrived. That question is still open and can be reargued at the hearing of final arguments relating to Serial No. 11 (b) (Aerial Spraying). In any case, all the points raised in this petition and argued on the 20th September, will be considered at that final hearing which has been tentatively fixed for the 19th October, 1976.

In Petition No. 55/SCI/76, the petitioners prayed for these reliefs :

- (i) The witnesses mentioned by the respondents in their list, dated 11-9-1976, may be examined ;
- (ii) in any event, before taking up each charge, pass orders deciding all the witnesses to be examined under each charge ;
- (iii) directing the examination of the investigating officers be postponed after the examination of the other witnesses ;
- (iv) settle the issues framing the points for determination and the points on which evidence had to be taken before taking up the examination of witnesses on the 20th ; and
- (v) adjourn the enquiry which has been fixed for 20th to some other convenient date.

By my short order announced on September 20, 1976, I had granted the above prayer No. (iii) and directed that the examination of the investigating officers concerned be postponed to a date after the 12th October, 1976 by which date, the examination of witnesses summoned by the Commission for recording oral evidence is expected to be completed, and the affidavits and counter-affidavits called by the Commission are expected to be received. The remaining four prayers were declined. It was announced that the detailed order dealing with the arguments canvassed by the respondents, would be prepared later and announced and communicated, according to the practice of the Commission, to the parties concerned.

Now I proceed to give detailed reasons in support of that order disposing of Petition 55/SCI/76.

As stated in my order, dated September 20, 1976, prayers (i) and (ii) are, in substance, a repetition of the same request which had been disposed of by me as per my order of September 11, 1976. It may be recalled that at the sitting held on September 11, 1976, it was contended by Mr. Shanti Bhushan, that the Commission must examine orally all the witnesses so that the respondents may exercise their right to cross-examine them under s. 8-C of the Commissions of Inquiry Act and that it would be highly unfair to accept in evidence either the opinions of the investigating officers expressed in their reports or rely on the record prepared by them. Mr. Bhushan had then also pressed for an immediate ruling as to whether it was going to call and examine, orally, all the persons who had filed statements/affidavits before the Commission or had been examined by the investigating officers purporting to assist the Commission under s. 5-A (2) of the Act. In short, the argument was that all these persons (whose number if all the 28 Allegations under enquiry are taken into account might exceed 300), excepting a few whose evidence was purely formal, be summoned for oral examination. Immediate decision of this question was demanded to enable the respondents to know where they stood.

It may be remembered that the Commission had earlier served a notice on the parties to file by the 10th September, 1976, the lists of witnesses whom they would like to be called for oral examination before the Commission. Neither party submitted any such list within the specified time-limit. At the fag end of the arguments on the 11th September, 1976, when I had announced the names of 17 witnesses, apart from the three investigating officers, with regard to Allegation 11 (a), 11 (b) and 17, to be summoned for oral examination, Mr. Ramaswamy, Counsel for the respondents, placed before me a list of about 200 persons whom they wanted to be called by the Commission for oral examination. Incidentally, 14 out of those 17 witnesses who were summoned, were those whose names prominently figure in the list of witnesses filed by the respondents. To that extent, the demand of the respondents stood immediately, albeit incidentally, conceded. The prayer of the respondents for summoning the remaining witnesses mentioned in their list, including the Memorialists, was not declined : It was only deferred till after the examination of the witnesses already summoned. The present petition (No. 55/SCI/76) is, in substance and effect, though not in terms, one for a review of my order, dated September 11, 1976.

The same request has been reiterated in writing, and with elaboration in this Petition. This order should therefore be read as complementary to my order, dated September 11, 1976.

On September 20, 1976, I had announced at the outset, that to begin with, the enquiry would be limited to Allegation Serial No. 11 (b) 'Aerial Spraying', so that the Respondents may concentrate on the cross-examination of the witnesses summoned in the first batch in regard to

this Allegation, whose evidence was to commence on that day and to continue from day to day till the 29th September, 1976. It was further announced that the evidence of all the witnesses who had not already filed their affidavits, but had been examined by the investigating officers assisting the Commission, would be taken on affidavits under s. 4 (c) of the Act, and a direction was made that 18 persons mentioned in the Schedule to that order shall file their affidavits pertaining to Allegation 11 (b), 'Aerial Spraying', by the 29th September, and thereafter, the respondents will file their affidavits in opposition and also of their witnesses by the 12th October, 1976, which date has now been extended to the 18th October. This order was made without prejudice to the Respondents' demand to call any of these witnesses for oral examination.

It is stated in the petition — and that contention has been reiterated at the bar by Mr. Shanti Bhushan and the other learned Counsel for the Respondents — that the Commissions of Inquiry Act, 1952 and the Rules framed thereunder contemplate that the Commission shall ordinarily record evidence by oral examination of witnesses ; and taking evidence on affidavits, is an exception. According to the learned Counsel, the Legislative intent is that recourse to s. 4 (c) should be taken only if the evidence of the witnesses is purely formal, based on official records or undisputed documentary evidence. In this connection, Counsel referred to the statutory sub-rules (2) and (5) of Rule 5 of the 1972 Rules framed under the Act. Sub-rule (5) provides that the Commission shall examine all the *statements* furnished to it under cl. (b) of sub-rule (2), and, after such examination, if the Commission, considers it necessary to record evidence, it shall record the evidence, if any, produced by the Central Government and may thereafter record the evidence of others.

Stress has been laid on the expression "record evidence" occurring in the above referred sub-rule (5), and s. 8-C of the Act. It is argued that Rule 5 (2), should be read together with s. 4 (c) and s. 8 of the Act, and, thus read, these statutory provisions give a general right of cross-examination to a party adversely affected by a statement submitted to the Commission, whether on affidavit or otherwise. It is argued that these provisions contained in s. 8-C and rule 5 were introduced in 1971 and, as such, none of the earlier precedents and judgments of the Supreme Court would apply.

The contention that the statutory provisions referred to, give the Respondents, a right to have the deponents of affidavits called for cross-examination, is not sustainable. This question is no longer *res integra*. The decision of the Supreme Court in *State of Jammu & Kashmir v. Bakshi Ghulam Mohammad** is a complete answer to the arguments of the learned Counsel on this point.

In that case, by a Notification, dated January 30, 1965, issued under s. 3 of Jammu & Kashmir Commissions of Inquiry Act, (32 of 1962), Mr. Justice N. Rajagopala Ayyangar was appointed as one-man Commission of Inquiry to inquire into —(i) the nature and extent of the assets and pecuniary resources of Bakshi Ghulam Mohammad and the members of his family and other relatives mentioned in the First Schedule to the Order, in October 1947 and in October 1963, and (ii) whether during this period Bakshi Ghulam Mohammad and the others mentioned in the Schedule, had obtained any assets and pecuniary resources or advantages by Bakshi Ghulam Mohammad abusing the official positions held by him or by the aforesaid people set out in the First Schedule by exploiting that position with his knowledge, consent and connivance.

The Commission held certain sittings between February 1965 and August 1965 in which Bakshi Ghulam Mohammad took part. The Commission first called upon the Government to file affidavits and to produce documents which supported them. It then asked Bakshi Ghulam Mohammad to file his affidavits in answer. Thereafter, the Commission decided that there was a *prima facie* case which Bakshi Ghulam Mohammad had to meet in respect of a group of allegations which the Commission decided to take up, first. In connection with that group of cases, Bakshi Ghulam Mohammad filed a petition that all the persons who had filed affidavits supporting the Government allegations be called for oral examination. The Commission ordered that he would not give permission to cross-examine all the deponents of affidavits but *would decide each case separately*. Thereupon, Bakshi Ghulam Mohammad on September 1, 1965 moved the High Court of Jammu and Kashmir under ss. 103 and 104 of the Constitution of Jammu & Kashmir (which correspond to Articles 226 and 227 of the Indian Constitution), for a writ striking down the notification and quashing the proceedings of the Commission. The High Court allowed the petition. The State appealed to the Supreme Court against that judgment. One of the contentions of Bakshi Ghulam Mohammad, which was accepted by the High Court, was, that the writ-petitioner had a right of cross-examination and the Commission by refusing to call all the witnesses relating to the group of charges in question, for oral examination, had deprived him of this valuable right of cross-examination. This claim was reiterated before the Supreme Court and was first based on the rules of natural justice. It was said that these rules requiring that a person adversely affected by the inquiry should have been given a right to cross-examine all those persons who had sworn affidavits supporting the allegations against him. A Bench consisting of five learned Judges of the Supreme Court, speaking through Sarkar C.J., repelled this contention, in these terms :

* (1966) Supp. SCR 401;

“ We are not aware of any such rule of natural justice. No authority has been cited in support of it. Our attention was drawn to *Meenglas Tea Estate v. Their Workmen*, but there all that was said was that when evidence is given *viva voce* against a person he must have the opportunity to hear it and to put the witnesses questions in cross-examination. That is not our case. Furthermore in *Meenglass Tea Estate* case, the court was not dealing with a fact-finding body as we are. Rules of natural justice require that a party against whom an allegation is being inquired into should be given a hearing. Bakshi Ghulam Mohammad was certainly given that. It was said that the right to the hearing included a right to cross-examine. We are unable to agree that that is so. The right must depend upon the circumstances of each case and must also depend upon the statute under which the allegations are being inquired into. This Court had held in *Nagendra Nath Bora v. Commissioner of Hills Division* that “ the rules of natural justice vary with the varying constitution of statutory bodies and the rules prescribed by the Act under which they function and the question whether or not any rules of natural justice had been contravened should be decided not under any pre-conceived notions but in the light of the statutory rules and provisions.” We have to remember that we are dealing with a statute which permits a Commission of Inquiry to be set up for fact-finding purposes. The report of the Commission has no force *proprio vigore*. This aspect of the matter is important in deciding the rules of natural justice reasonably applicable in the proceedings of the Commission of Inquiry under the Act. Then we find that s. 10 to which we have earlier referred, gives a right to be heard but only a restricted right of cross-examination. The latter right is confined only to the witnesses called to depose against the person demanding the right. So the Act did not contemplate a right of hearing to include a right to cross-examine. It will be natural to think that the statute did not intend that in other cases a party appearing before the Commission should have any further right of cross-examination. We, therefore, think that no case has been made out by Bakshi Ghulam Mohammad that the rules of natural justice require that he should have a right to cross-examine all the persons who had sworn affidavits supporting the allegations made against him.”

It was further contended before the Supreme Court that the statutory provisions, if properly construed gave Bakshi Ghulam Mohammad, a right to cross-examine all the witnesses. That claim was based on s. 4 (c) of that Act, the relevant part of which is as under :

“ The Commission shall have the power of a Civil Court, while trying a suit under the Code of Civil Procedure, Svt. 1977, in respect of the following matters :—

(a) summoning and to enforce the attendance of any person and examining him on oath.

(b)

(c) receiving evidence on affidavits.”

It was not disputed that the Code of Civil Procedure of Jammu & Kashmir State was in the same terms as the Indian Code of Civil Procedure.

It was further contended that the powers of the Commission to order a fact to be proved by affidavit under s. 4 (c) of that Act (which is identical with s. 4 (c) of the Indian Commissions of Inquiry Act, 1952) are subject to the proviso that that power cannot be exercised when a party desires the production of the persons swearing the affidavits for cross-examining them. The Supreme Court negatived this contention with these observations :

“ We must observe that the inquiry before the Commission is a fact finding inquiry. Then we note that s. 10 which, in our opinion, applies to a person whose conduct comes up for inquiry by the Commission directly, has a right to cross-examine only those persons who give *viva voce* evidence before the Commission against him. If s. 4 (c) conferred a right to cross-examine every one who swore an affidavit as to the facts involved in the inquiry then s. 10 (2) would become superfluous. An interpretation producing such a result cannot be right. It also seems to us that O. 19, R. 1 is intended as a sort of exception to the provisions contained in O. 18, R. 4. The Act contains no provision similar to O. 18, R. 4. Therefore when s. 4 (c) of the Act gave the Commission the power of receiving evidence on affidavits, it gave that as an independent power and not by way of an exception to the general rule of taking evidence *viva voce* in open Court. It would be natural in such circumstances to think that what the Act gave was only the power to take evidence by affidavit and did not intend it to be subject to the proviso contained in O. 19, Rule 1.”(underlining mine).

“ The number of witnesses swearing affidavits on the side of Government may often be very large. In fact, in this case the number of witnesses swearing affidavits on the side of the Government is, it appears, in the region of four hundred. The statute could not have intended that all of them had to be examined in open Court and subjected to cross-examination, for then, the proceedings of the Commission would be interminable. We feel no doubt that the Act contemplated a quick disposal of the business before the Commission, for, otherwise the object behind it might have been defeated. While on the topic, we would impress upon the Commission the desirability of speedy disposal of the Inquiry. For these reasons, in our view s. 4 (c) of the Act does not confer a right on a party appearing before the Commission to require a witness giving evidence by an affidavit to be produced for his cross-examination. The Commission would, of course, permit cross-examination in a case where it thinks that necessary. The view that we take should not put any party in any difficulty. He can always file affidavits of his own denying the allegations made in affidavits filed on behalf of the other party. If the evidence on both sides is tendered by affidavits, no one should be at any special disadvantage. We have also to remember that s. 9 of the Act gives the Commission power to regulate its own procedure subject to any rules made under the Act. We find that the rules provide that evidence may be given by affidavits and the Commission may after reading it, if it finds it necessary to do so, record the evidence of the deponents of the affidavits and also of others.” (underlining mine).

I have quoted the observations of the Supreme Court, in extenso, because in my opinion every word contained therein is fully applicable to the contentions raised before me. It must be remembered that the provisions of Jammu & Kashmir Act and the rules framed thereunder, which were the subject matter of interpretation before the Supreme Court, are substantially the same with which we are concerned.

Section 10 (1) of the Jammu & Kashmir Act is analogous to s. 8-B of the Commissions of Inquiry Act. Similarly, sub.s. (2) of s. 10 of the Jammu & Kashmir is in *pari materia* with s.8-C of the present Act with which we are concerned.

Nor is it correct to say that no statutory provision corresponding to s. 8-C of the 1952 Act, was in force in India before the introduction of this section by Act 79 of 1971 in the parent Act. Before the enactment of Act 79 of 1971, also, there was a provision in the statutory rules framed under the Act which was substantially the same which finds incorporation in s. 8-C. The only effect of the amendment of 1971 is that what was provided in the statutory rules has since been shifted into the parent Act, itself. It is therefore wrong to say, as has been stated in the petition by the respondents, that the judgment of the Supreme Court rendered prior to the Amending Act of 1971 are not applicable.

Following the *ratio* of *Bakshi Ghulam Mohammad's* case, I have no hesitation in holding that the Commissions of Inquiry Act and the 1972 Rules framed thereunder, do not give a general right of cross-examination to a party adversely affected by the evidence of a person taken on affidavit.

It was next contended that even if the statute does not give a right to the respondents to have all the witnesses called for cross-examination, then also, the Commission should exercise its discretion in accordance with the principles enunciated by Ayyangar Commission in *Bakshi Ghulam Mohammad's* case. It is submitted that in the said enquiry, Mr. Justice Rajagopala Ayyangar had divided the witnesses into two categories : (i) Those whose evidence was purely formal and based on undisputed documents and (ii) those whose evidence related to facts not borne out by unimpeachable documentary evidence, and whose credit was in question. It is maintained that Mr. Justice Ayyangar had made an order calling all witnesses in this second category for cross-examination. It is urged that I should also follow the same procedure and call all those who fall in the second category, even if their number be unduly large, for oral examination, because that order of Mr. Justice Rajagopala Ayyangar was upheld by the Supreme Court.

I am not inclined to accept this contention because what is a matter of discretion depending on the circumstances of each case, cannot be converted into an immutable rule of law. A procrustean approach, such as which seems to have been commended by the Counsel will extremely whittle down the utility of s. 4 (c), if not render it wholly redundant. It will bear repetition that the former Chief Justice of India, Mr. S. R. Das, who enquired into similar charges against Shri Pratap Singh Kairon, and Mr. Justice H. R. Khanna, who enquired into charges of corruption against the former Ministers of Orissa, took almost the entire evidence on affidavits and did not examine any witness, orally.

Mr. Shanti Bhushan, tried to distinguish those enquiries on the ground that therein no charge was levelled in any affidavit that any gratification was paid by any particular person or persons to the Minister or his agent, while in the present case such allegations have been made by several witnesses in their statements/affidavits, and the only mode of effectively impeaching

the credit of such witnesses known to law, is by cross-examination. Mr. Bhushan contended that in the circumstances of the case, the rules of natural justice require that the Commission must summon all the witnesses even if their number be large, whose evidence is not supported by unimpeachable documentary evidence. Counsel has laid stress on the observation of the Supreme Court in *Bakshi Ghulam Mohammad's case*, *ibid*, to the effect, that "the right (to cross-examine) must depend upon the circumstances of each case."

For reasons that follow, I am unable to accept this contention.

Firstly, the charges levelled against the Ministers before the Das Commission and the Khanna Commission were very similar to those that have been made against the Respondents before me. Before the Das Commission one of the charges was that Sardar Pratap Singh Kairon and his family members had "amassed wealth by misdeeds, blatant acts of corruption and gross misrule" and in that context in Charge 1, item 32, a reference was made to "the organised loot of wealth through force, coercion, intimidation and unfair means" by the respondent's son, S. Surinder Singh Kairon. The learned Chief Justice, Mr. Das, constituting the Commission, construed it as a charge against "*S. Pratap Singh Kairon and family*." Similarly, before the Khanna Commission, also, grave charges of corruption were levelled against the former Ministers. For instance, Allegation No. 16 was that the Respondents, Shri Patnaik, Shri Mitra and Shri Routray, had derived pecuniary benefits and amassed huge assets by abuse of power; Allegation No. 19 contained a charge of misappropriation of Government funds; Allegation 3 against Shri Patnaik related to securing pecuniary benefit in the name of his brothers' wife, in connection with insurance policies. Allegation No. 20 was that Shri Malik (former Deputy Minister) had amassed wealth far exceeding his pecuniary resources. It cannot therefore be said that the charges under enquiry before the Das Commission or the Khanna Commission were less grave or of a kind materially different from those before the Ayyangar Commission; and therefore those Commissions were justified in proceeding merely on the basis of affidavit evidence.

Secondly, the observations of the Supreme Court in *Bakshi Ghulam Mohammad's case* have to be read as a whole. It is not fair to amputate the clause "the right must depend upon the circumstances of each case" from the rest of the sentence *viz.*, "and must also depend on the statute under which the allegations are being enquired into." Again, this sentence should be construed in the context of the immediately succeeding observations which include, first, a reference to an earlier decision, *Neege Nagendra Nath Bora v. Commissioner of Hills Division* and then, the conclusion that s. 10 of Jammu & Kashmir Act (which is substantially the same as ss. 8-B and 8-C of the 1952 Act), gives a right to be heard but only a restricted right of cross-examination, conferred only to witnesses called for *viva voce* examination by the Commission. What the statute has clearly denied cannot be imported in the garb of a rule of natural justice. Rules of natural justice operate only in voids within a statute. They cannot be invoked to override the clear text or necessary intentment of a statute.

Thirdly, while it may be conceded that cross-examination is, under s. 146, Evidence Act, a direct mode of impeaching the credit of a witness, it is not the only mode, known to law, which can be employed for this purpose. Section 155, provides for four different ways in which the credit of a witness may be impeached. *Independent evidence can be adduced to discredit a witness—*

- (1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;
- (2) by showing that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give the evidence;
- (3) by proving former statements inconsistent with any part of his evidence which is liable to be contradicted;
- (4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Such independent evidence in an enquiry under the Commissions of Inquiry Act, may be adduced by counter-affidavits or affidavits-in-opposition under s. 4(c) of the Act. Although cross-examination is supposed to be a more effective method of shaking the credit of a witness, it is not always so. The result depends upon myriad factors, including the skill of the cross-examiner, the nature of the questions put to the witness, the intelligence and attitude of the witness, the answers given by him etc. The other methods indicated in s. 155 may sometimes be more efficacious, depending upon the character and quality of the independent evidence adduced.

Lastly, irrespective of the legal position that the respondents have no right to have the deponents of the affidavits called for cross-examination, I have already, in the exercise of my discretion, taken a big step towards acceptance of what is reasonable in the demand *i.e.*, in prayers

(i) and (ii) of the petitioner-respondents. In my short order, dated September 20, 1976, I had advisedly used the words "big step towards acceptance . . ." to indicate, that the summoning of these six witnesses did not necessarily exhaust the list of persons whom I would be calling for *viva voce* examination. I had also made it clear that these witnesses who had been summoned in the first batch, for oral examination, constituted the backbone of the charge *i.e.*, Allegation 11 (b) "Aerial Spraying", and even if some of them broke in cross-examination, the whole charge would snap. They are the most crucial witnesses. Indeed, if the serial order in which the names of the witnesses relating to a particular Allegation, set out in the list of witnesses filed by the Respondents, is taken as the order of priority for oral examination, then it will not be extravagant to say that while drawing up this list, even the Respondents felt that these witnesses are required to be summoned on top-priority basis. Five of these witnesses were those who are alleged to have either paid the tainted money to the Minister or his alleged agent, Mr. Rajagopal, or the Chief Minister through his Private Secretary, Mr. Vaithialingam, or were intimately associated with those who paid the tainted money. Mr. Rajagopal is said to be the common agent both of the Minister and of those who paid the tainted money.

Similarly, out of the 11 witnesses selected in the first batch for oral examination pertaining to Allegation 17 (Sugar Scandal), are the crucial most witnesses. The gravamen of that Allegation is that the various sugar manufacturers' concerns collected tainted money at certain rates per bag of sugar and the same was paid to the Chief Minister, Shri M. Karunanidhi, by Mr. Maruthai Pillai, the President of the Sugar Manufacturers' Association, through Mr. Vaithialingam. Mr. M. Pillai is the only direct witness of the payment of the tainted money to the Private Secretary of the Chief Minister for onward transmission to the latter. His companion, Mr. Gounder, is dead. Thus the witnesses who have been summoned satisfy even the criterion suggested by the learned Counsel for the Respondents.

The next contention as embodied in the petition and repeated at the bar, is that the procedure adopted and the order made by the Commission at the sitting on September 11, 1976, in selecting a few witnesses, *of its own accord*, for being called for cross-examination and deferring the decision as to the rest, was extraordinary, not warranted or contemplated in practice or in law, because —

- (a) "On this point the respondents' Counsel had not yet addressed arguments at all. But he had come fully prepared with relevant citations. When he was half way through his submissions, he was not allowed to complete his submissions but stopped in the middle and the Commission read out its order which it was keeping ready. This order, which was read out in the midst of all this, lays down that certain witnesses chosen by the Commission were to be examined;" (underlining mine).
- (b) it offends Rule 5 (2) (b), (5) and the interpretation thereof given by the Commission itself in its preliminary order, dated 13-7-1976, inasmuch as (i) the Commission *did not examine the numerous statements/affidavits* received in response to the public notification under cl. (b) of Rule 5 (2) (b) *at an open sitting of the Commission* in the presence of the interested parties and give them an opportunity to comment on the admissibility or otherwise of the evidence of each witness ; (ii) the notice by the Commission requiring them to file lists of witnesses whom they would wish to be examined orally, was issued without hearing the respondents; (iii) "of course, on 11-9-1976, in compliance with the said notice, the respondents had filed a list of witnesses in regard to all the allegations ;
- (c) the stage of rule 5 (5) for examination of the statements/affidavits received under Rule 5 (2) (b) had not arrived as the "pleadings" of the parties were not complete inasmuch as even the respondents had not yet filed their complete counter-affidavits in response to all the Allegations levelled by the memorialists ;
- (d) it marks a departure from the order, dated 13-7-1976, and rules 14 and 15 made by the Commission which according to Counsel, envisage that as a general rule, all persons who had filed statements/affidavits consequent upon the public notification issued under Rule 5 (2) (b), will be called for oral examination, and their affidavits will not per se be created as evidence, but will be used as part of the examination-in-chief.

I find this multifaceted contention wholly untenable. At the outset, it was noted, with regret, that this contention was sought to be conjured up on factually false premises and by misreading the order, dated 13-7-1976, and the Rules framed by me. It is manifestly false to say that at the hearing on 11-9-1976, I read out any ready-made order. What happened was that, at first, Shri Shanti Bhushan addressed his arguments insisting that all persons who had filed statements/affidavits before the Commission or had been examined by the investigating officers—which examination according to Counsel was illegal—should be summoned for oral examination. Then, the

Additional Solicitor-General addressed arguments, urging that the entire evidence in the case should be taken on affidavits and counter-affidavits, and not by oral examination of witnesses, which will inexorably land the Commission in interminable proceedings which may not see their end in a reasonable time. Thereafter, Shri Shanti Bhushan was called upon to reply to the arguments of the Additional Solicitor-General. When he was almost at the fag end of his address, in reply, and was more or less repeating what he had said in his opening address, I orally announced an order that the crucial witnesses in respect of Allegations 11 (b), 11 (a) and 17 will, in the first instance, be called for oral examination, and with regard to the rest of the witnesses, consideration of the request of the respondents is deferred till after the examination of the witnesses summoned, in the first instance. After pointing out that neither party had in compliance with the notice issued to them, furnished a list of witnesses within the time specified in the notice, I read out from a scrap of paper the names of 17 witnesses which I said would be summoned for oral examination, in the first instance. These names were noted by me in my own hand after scrutinizing for several days in my chamber, all the voluminous material including statements/affidavits received by the Commission. No ready-made order was ever read out by the Commission, as alleged in the petition. The second factual misstatement bearing on this contention in the petition is, that the respondents had filed a list of witnesses "in compliance with the notice" issued by the Commission. This allegation, which is extracted in (b) (iii) above, is incorrect and misleading. According to the order of the Commission conveyed through the notice to the parties, the lists of witnesses had to be filed by the 10th September. It was only after I had pointed out to the parties their failure to furnish the lists of witnesses and had announced orally my decision to summon, besides three investigating officers, 17 persons, after reading out their names from a piece of paper, for oral examination, that Mr. Ramaswami placed before me a rough list of about 200 persons whom the respondents wished to be summoned for examination and cross-examination. Obviously, this list was not filed within the time specified by the Commission, and thereafter, on the 13th September, a Counsel for the respondents filed another list of witnesses, 'dated 11th September,' which was an elaboration of the list submitted just after I had orally announced my decision to summon those 17 witnesses. It is therefore, a travesty of facts to say that this list of witnesses filed at the end of the proceedings on the 11th and then elaborated on the 13th September, was filed in compliance with the order of the Commission pointedly communicated to the parties.

At the outset of the arguments on the 20th September, 1976 these patently and factually wrong statements were pointed out by me to Shri Shanti Bhushan, Counsel for the Respondents. At first, the Counsel tried to justify these gross misstatements on the ground that they (respondents) might have mistaken the paper from which the names of the witnesses were read out, as a ready-made order. It was pointed out to Mr. Bhushan that such a factual mis-statement could not be unintentional because, firstly, at the material time on the 11th September, the Counsel for the Respondents were not at a distance of more than 8 or 10 ft. from me, and further, a copy of the detailed order which was dictated immediately after the proceedings, running into 13 full-scale typed pages, was, according to the practice followed by the Commission as a matter of abundant caution, duly handed over to the Counsel for the Respondents on the 13th September, the 12 September being a Sunday. The petition (No. 54/SCI/76) is dated 14th September, 1976. It would therefore be presumed that the respondents made these factually false allegations on the 14th after they had opportunity of verifying the correct factual position from my order, dated 11-9-1976, the copy of which they had received on the 13th. Mr. Vanamamalai, Counsel for the State also, took strong objection to these factual mis-statements and appealed to Mr. Bhushan to withdraw these mis-statements with an apology and close the matter. Thereupon, Mr. Bhushan submitted that the copy of the Commission's order, dated 11th September, was supplied to the Respondents' Counsel at New Delhi on the 13th, while the petition was drafted at Madras, when the person who drafted it for the respondents had not before him the copy of the Commission's order. Mr. Bhushan expressed regret but stuck to the argument that these factual mistakes in the petition were due to a misunderstanding of the proceedings. Thereupon, I declared that the matter with regard to these mis-statements be treated as closed.

However, the fact remains that the limbs (a) and (b) (iii) of the premises of this contention are factually wrong. Limbs (b) (i) and (ii) of the argument are also clearly unsustainable. There is nothing in Rule 5 (2) (b), (5) or in any other statutory provision which obligates the Commission to examine all the statements received in response to the notification published under Rule 5 (2) (b), at an open sitting of the Commission, only in the presence of the interested parties to enable them to offer their *viva voce* comments with regard to the statement of each witness. Indeed, where the number of such statements is very large, as in the present case, such a tardy, inconvenient and time-consuming procedure would be subversive of the basic scheme of these statutory provisions which contemplate quick disposal of the matter under inquiry. For instance in the present case, 207 statements/affidavits have been received in response to the notices/notification issued under Rule 5 (2). In addition, there are a large number of statements recorded by the investigating officers under s. 5-A of the Act. If the Commission were to examine these numerous statements at an open sitting of the Commission and hear oral arguments of the parties with regard to each witness, it may necessitate continuous open sittings of the Commission for an unreasonably prolonged period. It will be pertinent to mention here that the Das Commission

did not follow this procedure. It did not hear any oral arguments with regard to the question whether any deponent of an affidavit should be called for oral examination. It directed the parties to say whatever they had to say on this point, in writing, and thereafter decided that no witness would be called for oral examination. In the present case, the parties had notice that this question would be considered by the Commission. Indeed, in the agenda notified for the sittings held on September 11, 1976, it was clearly stated that proceedings under Rule 5 (5) would be taken. But each time, the Commission found itself unable to proceed further to that stage because the Respondents, despite extensions of time granted at their request, did not file their counter-affidavits complete in all respects with regard to all the Allegations under enquiry. Consequently, when the last extension of time for filing the complete additional counter-affidavits was granted to the Respondents, I, in the light of the past experience, issued specific notices to the parties, that at the next hearing fixed for the 11th September, proceedings under Rule 5 (5) would be taken and therefore the parties should submit the lists of witnesses by the 10th September, 1976 whom they would like to be summoned by the Commission for oral examination. Under Rule 17 framed by the Commission, the parties were required to state, *inter alia*, in such list, against the name of each witness why his evidence on affidavit would not be proper. As already noticed, the Respondents, despite service, did not comply with that notice. They did not file any list of witnesses by the 10th September. Even in the list filed by them beyond time at the far end of the arguments on the 11th September, they did not, as required by the aforesaid Rule 17, give any reasons, whatever, as to why the evidence of a particular witness mentioned in the list, obtained by affidavit would not be proper or adequate, and why his evidence by *viva voce* examination was deemed essential. Thus the Respondents were given the fullest opportunity of being heard and making their submissions in writing as to the question to be considered at the stage of Rule 5 (5). The Respondents deliberately did not avail of the opportunity offered to them by a written notice issued by the Commission. I had therefore no alternative but to take a decision in the light of the thorough examination of all the statements and affidavits received, made by me earlier for several days in my chamber, as to which witnesses, in the first instance, were to be summoned for oral examination.

As regards limb (c) of the contention, it passes my comprehension, how the respondents can be heard to say that the stage of Rule 5 (5) for examination of the statements/affidavits received by the Commission could not arrive because they had failed to file their complete 'pleadings' or counter-affidavits despite repeated directions of the Commission and several extensions of time granted to them for the purpose. The Respondents cannot profit by their own wrong. What was a default on their part, could not be allowed to be used as a ground for arresting or impeding the further progress of the proceedings.

This takes me to limb (d) of the contention. The argument is that in my order, dated 13-7-1976, while explaining the difference between the old Rules (1960) and the new Rules (1972), I had, in effect, declared that no statement whether on affidavit or without affidavit filed in response to the notification published under Rule 5 (2) (b), can *ipso facto* be treated as evidence, unless after an examination of all such statements under Rule 5 (5), the Commission takes the evidence of the author of that statement either by oral examination or by affidavit. This argument is devoid of force. It seems to be based on a misreading of my order, dated 13-7-1976. The relevant part of that order reads thus :

"Under sub-rule (2) of Rule 2 of the 1960 Rules, every statement whether furnished under clause (a) or clause (b) of sub-rule (1), which correspond to clauses (a) and (b) of Rule 5(2) of the 1972 Rules, was peremptorily required to be accompanied by an affidavit in support of the facts set out in the statement sworn by the person furnishing the statement . . . The Commission could *per se* treat those affidavits, whether furnished under clause (a) or clause (b) as evidence in the case. This is not so under the Rules which are now in force. Under sub-rule (3) of Rule 5 of the current Rules of 1972, the obligation to file an affidavit attaches only to statements furnished in response to notice issued under cl. (a) and not to statements furnished by members of the public under cl. (b) of Rule 5 (2). The result is that while statements on affidavits furnished in response to notices under the aforesaid clause (a) can be treated by the Commission as evidence, the *bare* statements furnished under cl. (b) do not *ipso facto* become a part of the evidence. It is after such examination (under sub-rule (5)), that the Commission will decide as to whether the evidence of any of the persons who have furnished statements under clause (b) should be taken on affidavits or by calling him for oral examination. In any case, if a person is called for oral examination or his affidavit is treated as part of his examination-in-chief, the respondents and others adversely affected by the same will be afforded an opportunity to cross-examine him in accordance with the rules of procedure devised by the Commission."

In the context Rules 14 and 15 devised by the Commission may also be seen. They run as under :

Rule 14 : After examination of all the statements that may be furnished in response to the notices issued under Rule 5, the Commission may, if it considers necessary in the interest of justice, call upon any person filing an affidavit to give oral evidence and submit himself to cross-examination. In such a case, the affidavit already filed by the person may be treated as part of his examination-in-chief.... No party, however, will have the right to insist on oral examination of an affidavit.

Rule 15 : In case oral evidence is recorded, cross-examination shall be allowed to all parties and persons as indicated in s. 8-C of the Act.

From a fair reading of what has been extracted above, it is clear as daylight, that I have nowhere said or declared that if in response to the notification under Rule 5 (2) (b), a person instead of filing a bare statement, files an affidavit, such an affidavit cannot be treated as substantive evidence of the relevant facts averred therein. What I had explained there was, that for a person filing a statement pursuant to notification under Rule 5 (2) (b), it is not obligatory that he should make that statement on affidavit. The new Rule 5 (2) (b), (3) leaves it to the option of the person concerned to file such statement on affidavit or without affidavit. If the statement furnished by such person is a *bare* statement, *not* on affidavit, it cannot *ipso facto* be treated as evidence under s. 4 (c) of the Act. If it is on affidavit, there is no reason why it cannot, if relevant, be treated as evidence under s. 4 (c) before the Commission. The question of taking evidence on affidavit after scrutiny of the statements under Rule 5 (5) arises only in the case of a statement which is not on affidavit, duly sworn by its author before a competent authority. Rather, my order dated 13-7-1976, read with Rules 14 and 15 extracted above, puts it beyond doubt, that no party has a right to have the deponent of an affidavit called for oral examination or cross-examination. It is not a correct interpretation of my said order and the Rules, to say that the affidavit furnished before the Commission can be used only as part of the examination-in-chief and not as self-contained substantive evidence. Rule 14 is only an enabling provision. Like s. 8-C, it comes into operation only if the Commission, in its discretion, decides to record the evidence of the deponent of an affidavit by *viva voce* examination. Even in that event, it is open to the Commission to bypass his affidavit and record his examination -in-chief afresh and in full by *viva voce* examination. This is clear from the use of the word "may be treated" in Rule 14. The word "may" reserves such a discretion to the Commission. Rule 14 makes it clear that the Commission, under the Rules devised by it, has not conceded any general right of cross-examination of the deponent of an affidavit, to a party adversely affected by it.

In the light of what has been said above, it is evident that the procedure adopted and the order made on 11-9-1976 is in no way inconsistent with what I had enunciated in my order, dated 13-7-1976, and the rules devised by me ; and I see no reason to change the same.

It was further contended by Shri Shanti Bhushan with great vehemence that a climate of terror has been created by the investigating agencies of the Centre and the State in particular, which in collaboration with the Income-tax Department, have by the use of unfair, coercive methods, such as, criminal prosecution, threat of detention under MISA, threat of dismissal from service, duress, tutoring etc., extorted false statements from witnesses. Moreover, proceeds the argument, these statements are not on solemn affirmation ; and, for these reasons, they cannot be used for any purpose whatever by the Commission. It is maintained that in the circumstances what they are, the only proper course open to the Commission is to call everyone of them for oral examination so that their veracity is effectively tested by cross-examination.

General allegations of this nature against the investigating agencies of the Centre and the State were levelled in Petition No. 54/SC1/76. I had, therefore, on 14-9-1976, issued a notice to the Respondents-petitioners that they must give particulars of these allegations and file an affidavit in support thereof. On 20-9-1976, Thiru Karunanidhi filed an unattested affidavit in which, also, he has not disclosed the names of witnesses — with the exception of Mr. Vaithialingam, his former Private Secretary—who, according to him, were terrorised or coerced or tutored to make false statements before any investigating officer collecting evidence under the orders of the Commission, under s. 5-A, regarding Allegations 11 (b) (Aerial Spraying), 11 (a) (Nathan Publications), 17 (Sugar Scandal), which according to my order made on 11-9-1976, were to be first taken up for enquiry by the Commission. Mr. Karunanidhi, however, named four persons in paragraphs 43, 44, 45 and 46 of his unattested affidavit, who are alleged to have sent him information that they had been harassed and coerced by the C.B.I. or the Police to make false statements, against him, with regard to matters *other than* those which are the subject matter of Allegations 11 (b), 11 (a) and 17. These witnesses, according to the deponent, are :

- (i) Thiru K. R. Purushothaman,
- (ii) Thiru Nagarajan,
- (iii) Thiru Kathiresan, and
- (iv) Thiru T. P. Arumugham.

Out of these, Thiru K. R. Purushothaman has filed an affidavit before the Commission in response to the notice issued under rule 5 (2) (a). His evidence relates to Allegation Serial No. 10 (Veeranam). His summoning for oral examination will be duly considered when that Allegation is taken up for proceedings under Rule 5 (5). Mr. Nagarajan, who later became Private Secretary to Shri Karunanidhi, has been examined by the Investigating Officer in respect of Allegation No. 10 (Veeranam). Whether he should be summoned for examination before the Commission, will also be considered when I take up Allegation No. 10. I am further informed that no statements of Thiru Kathiresan and Thiru T. P. Arumugham have been recorded by any of the Investigating Officers assisting the Commission. Thiru Kathiresan's evidence, I am told, is not relevant to any of the Allegations under enquiry. In any case, none of the four witnesses is supposed to have given any evidence relating to Allegations 11 (b), 11 (a) and 17, which have been chosen, in the first batch, to be taken up, one after the other, for proceedings under rule 5 (5) and s. 4 (c) of the Act.

I asked Mr. Shanti Bhushan as to why his clients had not disclosed the names of witnesses who were allegedly threatened or forced to make false statements pertaining to the Allegations which are being taken up in the first batch. Counsel replied that the witnesses were terror-stricken and disclosure of their names would entail reprisals against them ; and put their liberty in jeopardy. Counsel then referred to this sentence in the affidavit of Shri Karunanidhi : " Even at the risk of my affidavit being rejected in not disclosing the names of these persons, I am refraining from doing so to avoid reprisals against those persons, but if the Commission gives me an interview confidentially, I am prepared to pass on the names on the assurance that those names will not be passed on to the Police." Mr. Bhushan reiterated the offer that his client was prepared to tell the Commission, in confidence, the names of all the witnesses and the particulars of the harassment to which they had been subjected to by the C.B.I. Officers, if the Commission would keep that information strictly to itself. I immediately accepted the offer and told the learned Counsel that he should give the requisite particulars and names in a sealed envelop, the contents of which would not be disclosed to anybody else. I further assured him that I would keep that confidential information in mind while considering their request for summoning witnesses for oral examination. Thus, I had indirectly but clearly indicated that I would call all such persons whose names might be disclosed, for oral examination. I had earlier informed the Counsel for the parties in open Court that I had decided to take evidence on affidavits of all the persons examined by the Investigating Officers without prejudice to the Respondents' contention to have any of them called for oral examination, also. I had also announced that in the affidavits, the deponents would be required to say, also, whether their statements were procured by coercion, threat, inducement, tutoring or by the use of other unfair means. I repeatedly assured the Respondents that if from all the evidence taken by the Commission, on affidavits or by oral examination, it appears that false statements have been extorted or procured by the use of unfair means, I might ignore altogether the statements recorded by the Investigating Officers and their reports. It was further made clear that their request for summoning the remaining witnesses, including the Memorialists in the list, had not been declined. As regards them, consideration of their request has only been deferred and will be considered after the examination of the witnesses in the first batch who constitute, as it were, the vertebral column encasing the spinal cord of the charge in Allegation 11 (b), and they should try to smash their evidence in cross-examination.

Despite these assurances and clarifications, no particulars or names of the witnesses with the solitary exception of Mr. Vaithialingam, were disclosed to me even in confidence by the Respondents. Mr. Bhushan, impliedly withdrew that offer after it had been accepted by me, by making no further mention of the same and shifting his stand to the allegation made in para 41 of " Affidavit " of Mr. Karunanidhi which is to the effect :

" If either the Emergency was lifted or there was a curb on indiscriminate use of MISA, people will come in hundreds to tell the Commission their woeful tales."

This really means that the Commission should postpone further proceedings till the Emergency is lifted or the use of MISA is curbed. This is entirely an extraneous argument which is really meant for the gallery, and not for the Commission.

The allegations against the Investigating Officers assisting the Commission, have been irresponsibly made in a vague and general manner. They could be ignored merely on account of their vagueness. Nevertheless, I will deal with them while considering the contentions raised in Petition No. 54/SC1/76. It is enough to say here that such vague and general allegations are hardly a ground for wholesale summoning of all the persons for oral examination. The truth or otherwise of these allegations could be ascertained only if the names of those witnesses and other relevant particulars had been disclosed. The name of one witness only, namely, Mr. Vaithialingam regarding Allegation 11 (b) and also 11 (a) and 17, was disclosed, and as a result, orders were subsequently issued for summoning him and two other concerned officials, Mr. P. N. Vedarayanan and Mr. N. Hari Bhaskar for oral examination before the Commission.

Mr. Govind Swaminathan, then addressed the Commission mainly with regard to prayer No. (v) in the Petition. The learned Counsel submitted that orders passed for summoning those

six witnesses, in the first batch, was made only on the 11th September, 1976, and that ten days' time was too short for his clients to collect material and prepare themselves for cross-examination of these witnesses. He complained that copies of the Investigation Reports and the statements recorded by the Investigating Officers, had not been supplied to them. He stressed that the record prepared by the Investigating Officers runs to several hundred pages and inspection of those records which had concluded only on the 4th September, was no substitute for the certified copies of that record which ought to have been supplied to them. He particularly emphasised that copies of the statements of these witnesses recorded by Mr. R. P. Kapur, Deputy Superintendent of Police, under s. 161 of the Code of Criminal Procedure, in a case arising out of this very matter, which is the subject of Allegation No. 11 (b), have not been supplied to the Respondents ; and that in the absence of those copies, it would not be possible for the Counsel to cross-examine these witnesses in a case wherein so much of his clients' is at stake. He, therefore, requested that the proceedings be adjourned at least for a period of one month, if not more. I pointed out that the summoning of these witnesses whose evidence was to commence that day, was indeed a step towards acceptance of the demand of the Respondents. Five, out of these six witnesses, who had already been summoned, were those who had filed their affidavits before the Commission and copies of those affidavits had been supplied to the Respondents more than one and half month earlier and that the investigation reports, including the statements recorded therein, were fully inspected by the Respondents more than two weeks back and they, in fact, had got prepared verbatim copies of the same with the aid of stenographers, by the 4th September, 1976. I further reminded the learned Counsel, that the documentary evidence collected by Mr. Kapur while investigating the criminal case under the Penal Code and the Prevention of Corruption Act, against Shri Hari Bhaskar & others registered in 1973, including synopsis of the statements recorded under s. 161, Cr. P. C. by Mr. Kapur, form an Annexure to the investigation reports that had been copied out by his clients. Counsel was further informed that Mr. Kapur is not one of those officers who have been nominated under s. 5-A for assisting the Commission.

It may be observed that Rajagopal was the first witness whose evidence commenced on the 20th September, 1976. His examination-in-chief continued for the following two days. Even if an application for certified copies of the statements of the witnesses recorded under the Criminal Procedure Code by Mr. Kapur, had been made on the 20th September, then in all probability, the copies could have been supplied by that officer well in time before the conclusion of the examination-in-chief of Shri Rajagopal. But it seems that the respondents never applied for obtaining copies of those statements recorded by Mr. Kapur, much less did they ask for the assistance of the Commission, in time, for obtaining those copies.

In the totality of circumstances, the request of the learned Counsel for the Respondents for the grant of a long adjournment of the proceedings and postponement of the recording of the evidence of the witnesses already summoned, was reasonable and did not appear to have been made in good faith. Had a short adjournment and reasonable adjustment in the date-sheet for examination of the witnesses, already summoned, been sought, that would have been granted. In my order, dated 11-9-1976, I had clearly stated that the date-sheet announced for examination of the witnesses was only tentative and was liable to adjustment according to the exigencies of the situation. But the request for an adjournment of a month or so was patently unreasonable when the witnesses had been summoned from far off places at great expense, and that, too, as a step towards acceptance of what was reasonable in the demand of the Respondents. I also reminded the Counsel that all reasonable latitude had been given by me. Several extensions of time had been granted for filing complete counter-affidavits by the Respondents. The counter-affidavits which should have been filed, complete in all respects in the first instance, by the Respondents by the 12th of July 1976, were not filed by them, despite repeated extensions of time, till after the commencement of the hearing on the 20th September, 1976. And what is more regrettable is that this unusual procrastination, delay and laxity on their part in filing complete counter-affidavits, was sought to be made a ground disabling the Commission to proceed further to the stage of rule 5 (5). No less than 50 petitions were made by the Respondents, from time to time, and in many of them full-fledged hearings were demanded, and were given. Some of these petitions were submitted just before a date fixed for the next hearing of the Commission on which the Respondents were required to file their counter-affidavits or additional affidavits, and, in some of them, requests were made directly for extension of time for filing of affidavits. Adjournments of hearings were also sought indirectly by asking for extension of time for inspection of official records and that the complete counters would be filed after the completion of the inspection. Requests, whether oral or in writing, for inspection of records or extension of time for inspection were immediately and liberally granted, even without hearing the other side. As a concession, the Respondents were allowed to postpone the filing of their affidavits with regard to Allegation No. 10 (Veeranam) and the proceedings before the Commission were limited in the first instance to nine Allegations, namely, Nos. 3, 11 (a), 11 (b), 12, 15, 16, 17, 19 and 22.

After reviewing in my mind all that has happened in or before this Commission during the past 4 1/2 months, including the various orders passed by me disposing of objections, granting concessions, extensions of time for filing counter-affidavits or for inspection of records by the Respondents, I am inclined to think, with regret, that the Respondents intimation not to partici-

pate further in the proceedings of the Commission is not actuated by the grounds ostensibly set out in their petition or canvassed at the bar, but is motivated by extraneous considerations. Even so, the Respondents have a right — and indeed such a step would always be welcome — to come back and participate in the further proceedings before the Commission to vindicate the truth. In that hope, notice of the dates of the further hearings and the agenda fixed therefor, will go to all the parties by publication in newspapers or otherwise.

Before I part with this order, I may observe that prayer No. (iv), for framing of issues, was also misconceived. I am holding only a fact-finding enquiry and not conducting proceedings in a suit. Moreover, this was no stage for such a request when, the witnesses had already been summoned for oral examination. The Allegations under enquiry are not new charges which are likely to overtake the Respondents by surprise or prejudice them in their defence. The Allegations are the same which the Memorialists had set out in their Memorandum to the President in 1972. On that occasion, the Respondents had sent their reply to that Memorandum, and had indeed, published the charges and their replies in the form of booklets for the information of the public. In his counter-affidavit, Shri Karunanidhi has also referred to his earlier published reply. The Respondents were thus fully aware of the points in controversy. I therefore do not find any merit in this prayer.

These, then, are the reasons which I now give in support of my short order pronounced on the 20th September, 1976 on Petition No. 55/SCI/76. Let copies of this order be sent to the parties, as usual.

Dated, New Delhi, the 14th October, 1976.

(Sd). R. S. SARKARIA,
Commission.

APPENDIX VII

SARKARIA COMMISSION OF INQUIRY

Record of proceedings of the sitting of the Commission held at New Delhi :

Miscellaneous Petition No. 54/SCI/76

(Application by the Respondents for Directors)

22nd November, 1976 : 11 A.M.

Before Mr. Justice R. S. Sarkaria (Commission)

For the Central Government : Shri Harish Chandra, Advocate.

The Order of the Commission dismissing the above-mentioned Miscellaneous Petition No. 54/SCI/76 was announced today at 11 A.M. at an open sitting.

New Delhi,
22nd November, 1976.
Encl : Order

(Sd.) R. S. SARKARIA,
Commission

SARKARIA COMMISSION OF INQUIRY

MISCELLANEOUS PETITION NO. 54/SCI/76

(Application by Respondents for directions)

ORDER

Respondent-petitioners, Thiru M. Karunanidhi and Ors. jointly filed this petition praying that "the investigation reports and statements recorded therein, may be taken off the record and the Commission decide the matter without any reference to them." On September 20, 1976, after hearing Counsel for the parties, I had pronounced this short order :

"The objections raised in this petition are premature. The stage for considering, whether the investigation reports and records prepared by the investigating officers, should be made a part of the record of the Commission, and used or treated as such, has not yet arisen. That stage will arise only after the Commission completes proceedings in relation to any definite charge or charges under inquiry, viz., the taking of evidence and the enquiry under sub-s. (5) of s. 5-A of the Act. In the instant case, the evidence of all the witnesses examined by the investigating officers in respect of Allegation 11 (b) "Aerial Spraying" is sought to be taken either by oral examination, or by affidavits and counter-affidavits under s. 4(c) of the Act. Such proceedings will, also incidentally serve the

purpose of the inquiry envisaged by sub-s. (5) of s. 5-A of the Act. Orders in Petition No. 54/SCI/76 are therefore reserved and deferred till after the completion of the taking of evidence by the Commission in any of the modes permissible under the Act and the Rules, in respect of Allegation No. 11 (b)."

By a subsequent order, dated October 14, 1976, I had reiterated that the objections raised in this petition were still open and could be reagitated at the time of final arguments in respect of Allegation 11 (b). It was added : "In any case, all the grounds of objections enumerated in the petition shall be considered at the time of final arguments." The stage for considering the objections raised has now been reached because the entire evidence of the witnesses, relating to Allegation 11 (b), has been taken by me either on affidavits or by oral examination, or, by both.

The respondents have assailed the admissibility of the investigation reports and the statements of witnesses recorded therein, on legal grounds as well as on factual grounds.

(A) Objections in Point of Law :

The legal objections as raised in the petition and later developed at the bar by the Counsel on the 20th September, 1976, may be summarised as below :

- (i) The powers under s. 5-A can be invoked only where the Commission finds, during the course of the enquiry that any matter, fact or issue pertaining to or arising out of any definite matter of public importance under enquiry before it, *requires local investigation* by an officer of an investigating agency. An order under s. 5-A can be made *only after an analysis of all the statements/affidavits* received in response to the notices/Notification issued under rule 5 (2). Such an order cannot be made before the preliminary hearing by the Commission ; nor without hearing the parties interested. Nor can *all* the matters entrusted to the Commission for enquiry be made over under s. 5-A to an investigation agency of the Government or its officers for investigation, as such a course would amount to a wholesale delegation of its task and powers by the Commission.

The orders in question are bad, *ultra vires* and *non-est* in the eye of law, and the entire investigation conducted, material collected and the reports submitted in pursuance of those illegal orders, are also void in as much as —

- (a) the orders were not issued at the proper stage, during the enquiry but prematurely, (on 10-5-1976 and 13-5-1976), even before the preliminary sitting of the Commission was held ;
- (b) they were made without hearing the parties ;
- (c) they make over *all* the 28 allegations entrusted for enquiry to the Commission under Central Government Notification dated 3-2-1976, to the Police Officers of the investigating agencies of the Centre and the State, and as such, amount to a wholesale abdication of its powers by the Commission, and constitute, in effect, officers of those agencies into a mini-Commission ;
- (d) many of the Allegations made do not constitute offences which would be investigated by a Police officer under the Code of Criminal Procedure or under the Delhi Special Police Establishment Act by a *member* of the C.B.I.
- (ii) The statements recorded by the investigating Police officers appointed under s. 5-A are not recorded on oath or solemn affirmation and their authors can, therefore, tell lies with impunity while enjoying all the benefits of the immunity afforded by s. 6 of the Act. Such statements which do not carry the sanction of oath or solemn affirmation, do not stand on the same footing as affidavits under s. 4 (c) or statements recorded under sub-r. (5) of Rule 5 read with s. 8-C ; and therefore cannot be used as *evidence* in the case before the Commission.

(B) Objections in point of fact :

The appointment of Police officers under s. 5-A was improper, and the material collected by them and the investigation reports submitted by them, are tainted and vitiated because of following circumstances :

- (a) The Central and the State Governments in their desire to bring home the charges to the Respondents, who constituted previously the opposition party in power in the State, appointed the same officers of the C.B.I. and the officers of the State Police who were investigating into these matters illegally, even prior to their nomination/appointment by the Commission for investigation and report.

- (b) The Central Government and the State Government are interested parties and the appointments of Police officers of those Governments was improper as they could not be expected to be impartial in the investigations.
- (c) The investigating officers appointed by the Commission are guilty of misconduct, usurpation of jurisdiction and the use of unfair means in procuring statements. They entered houses, searched and seized papers, documents etc. They collected witnesses, took them to common places, interrogated them, tutored them and made them sign statements under coercion, threat of detention under MISA, threat of criminal prosecution etc.
- (d) Nearly all the purported statements received in response to the Notification published under Rule 5 (2) (b) had been procured "by those officers exercising their so-called powers of investigation under s. 5-A of the Act, being parrot-like repetition sworn to by them on the same day before the same authority and typed on the same typewriter." In this connection reference has been made to Para 3 of the Memorandum of the instructions given on 29-5-1976 by the Commission to the investigating officers which, according to the unattested "affidavit" of Mr. Karunanidhi, are "shocking."

I have heard further the learned Additional Solicitor-General appearing for the Central Government. He has reiterated and elaborated the arguments that he had addressed at the sitting of the Commission held on September 11, 1976. None has appeared on behalf of the Respondents to re-agitate or elaborate the objections which they had canvassed on the 20th September, 1976, although a copy of the order, in which it was stated that the objections raised in Petition No. 54/SCI/76 would be considered at the time of final arguments in respect of Allegation No. 11 (b), was sent to the Respondents. Nevertheless, I will consider all the objections raised in the Petition that had been urged with implication at the Bar on the 20th September and which have been summarised in a foregoing part of this order.

Before dealing with the contentions raised, it will be useful to have short and swift look at the legislative history of the Commissions of Inquiry Act, 1952 (for short, referred to as 1952 Act), in general, and its section 5-A, in particular.

The 1952 Act was largely inspired by the English Tribunals of Inquiry (Evidence) Act, 1921 (for short, called the English Act).

In England, in the past three centuries, before the enactment of the English Act, fact-finding inquiries into matters of public importance were conducted by Select Committees of Parliament. Despite their Zeal and earnestness to investigate, such Parliamentary Committees were handicapped and hampered in their task by "recalcitrance of witnesses, in some instances by the non-production of documents, and above all, by the lack of dominating legal guidance through the tangle of assertions and counter-assertions which the inquiries evoked." "Parliamentary lawyers did their best but their capacity to intervene depended upon their membership of the Select Committee, and even so, they had no opportunity for consideration of the evidence to be offered before the inquiry actually started." (Keenton).

Party affiliations, political pre-dilections and prejudices of the Members constituting these high investigating bodies, sometimes, so subtly and unmistakably crept into their proceedings that it was not possible for them to appear and act as mere creatures of reason and objectivity in discharging their primal, fact-finding function. More often than not, the inquiry conducted by them assumed a political complexion, and they could not produce anything more than a censure based on a political judgment, upon an administration that had already quitted office having lost the confidence of the Legislature.

In 1921 when Captain Loseby, a Member of Parliament, made certain allegations against the British Minister of Munitions, and the officials of his Ministry, it was felt that the old system of investigation by Parliamentary Committees into allegations of public misconduct stood discredited, and, therefore, it was necessary to devise a new machinery which would be capable of ensuring impartiality, in appearance as well as in fact, and of making a thorough vigorous, and effective probe. In an attempt to achieve this two-fold objective, the English Act of 1921 was passed.

Although inexhaustive and hurriedly enacted, the English Act did provide for a method of inquiry by a Tribunal into a definite matter of urgent public importance, which was an advance over which had hitherto been in vogue. Such a Tribunal can be appointed if both Houses of Parliament pass a resolution that it is expedient to do so. A Tribunal constituted pursuant to such a resolution, *for certain purposes* shall have all the powers, rights and privileges that have been vested in the High Court. The Tribunal has power to enforce attendance of witnesses and examine them on oath, affirmation, or otherwise; to compel the production of documents; to issue a commission or request to examine witnesses abroad (Section 1 (1)). If any person on

being duly summoned as a witness, makes default in attendance ; or being in attendance refuses to take an oath legally required by the Tribunal to be taken, or to produce document in his power or control legally required by the Tribunal to be produced, or to answer any question to which the Tribunal may legally require an answer, or does anything which would constitute contempt in a Court of Law, then the Chairman may certify the offence to the High Court which may, after due inquiry, punish such person, if found guilty, of contempt of Court (Sub-section (2) of Sec. 1). A witness before the Tribunal has the same privileges and immunities as in a Court of Law (Sub-section (3) of Sec. 1). The Tribunal has power to authorise any person appearing before it, who appears to be interested, to be represented by counsel or solicitor or otherwise, or refuse to allow such representation (Section 2 (b)).

The English Act as enacted in 1921, contained no provision concerning the procedure to be followed by the Tribunal. Nor was there any provision that answers given by a witness cannot be used against him in any criminal or civil proceedings.

In 1966, a Royal Commission was set up under the Chairmanship of Lord Justice Cyril Salmon to review the working of the English Act, 1921, and "to consider whether it should be retained or replaced by some other procedure, and, if retained, whether any changes are necessary or desirable ; and to make recommendations." The Royal Commission recommended for the retention of the English Act, subject to certain amendments and safeguards. But, so far, no amendments of the English Act, pursuant to the recommendations of the Commission, appear to have been inserted in the English Act by the British Parliament.

The position in India prior to 1952, was, that inquiries were held into such matters under executive orders, and that, too, on occasions few and far between. Although the 1952 Act drew largely from the English Act, it is not a mere copy of the latter. There are significant differences between the two enactments. For instance, under s. 3 of the 1952 Act, the 'appropriate Government' can constitute a Commission of Inquiry purely of its own motion. But this is not so under the English Act, whereunder, a resolution by both Houses of Parliament is a *sine qua non* for appointment of a Tribunal. Again, under the 1952 Act, a resolution of the Lok Sabha or the Legislative Assembly, as the case may be, asking for the setting up of a Commission to inquire into a definite matter of public importance, is binding on the appropriate Government; while under the English Act such a resolution by both Houses of Parliament has, *in law*, only an advisory effect.

Sections 4 and 5 of 1952 Act contain provisions which are an improvement over the corresponding provisions of the English Act. Section 4 provides that the Commission shall have the power of a Civil Court while trying a suit under the Code of Civil Procedure, 1908, in the following matters :—

- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath ;
- (b) requiring the discovery and production of any document ;
- (c) receiving evidence on affidavits ;
- (d) requisitioning any public record or copy thereof from any court or office ;
- (e) issuing commissions for the examination of witnesses or documents ;
- (f) any other matter which may be prescribed.

'Prescribed' means prescribed by Rules made under this Act.

Section 5 provides for the additional powers which may be conferred on the Commission by the appropriate Government by a Notification published in the official gazette. These additional powers — which have been duly conferred on this Commission — are indicated in sub-sections (2), (3), (4) & (5) of this Section.

Sub-section (2) lays down that the Commission shall have power to require any person (subject to any claim of privilege under any law) to furnish information on such points or matters that may be useful for or relevant to the subject-matter of the inquiry.

Under sub-section (3), the Commission shall have power to authorise any officer not below the rank of a gazetted officer, specially authorised in this behalf by the Commission, to enter any building or place where the Commission has reason to believe that any books of account or other documents relating to the subject matter of the inquiry may be found, and may seize any such books of accounts or documents or take extracts or copies therefrom, subject to the provisions

of Sections 102 and 103 of the Code of Criminal Procedure, 1898, in so far as they may be applicable.

Sub-section (4) introduces a legal fiction which cannot be extended beyond the purpose for which it is created. It clothes the Commission, *only in certain situations*, with the powers of a Civil Court. These situations are : when any offence as is described in Sections 175, 178, 179, 180 or Section 228 of the Indian Penal Code is committed in the view or presence of the Commission. In such a case, the Commission may, after recording the facts, forward the case to a Magistrate having jurisdiction to try the offence.

Sub-section (5) provides that any proceeding before the Commission shall be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code.

In the context, we may also see sub-rule (5) of Rule 5 of the Commissions of Inquiry (Central) Rules, 1972, framed under the Act, which, *inter alia*, provides that the Commission, if, after examination of all the statements furnished to it under sub-rule (2) of this Rule, "considers it necessary to record the evidence," it shall record first the evidence, if any, produced by the Central Government, and thereafter of others. From a conjoint reading of Sections 4 and 5 with Rule 5 (5) it emerges that the Commission has been empowered to take evidence of witnesses in any one or more of the following modes :—

- (1) on affidavit, (section 4 (c)).
- (2) by oral examination of witnesses, (Rule 5 (5)).
- (3) by issuing commission for the examination of witnesses or documents. (Section 4 (c)).

Rule 5 (5) is substantially the same as Rule 3 of the (repealed) Rules of 1960.

Ever since the pronouncement of the Supreme Court in *Jammu & Kashmir State v. Bakshi Ghulam Mohammad*, (1966) Suppl. S.C.R. 401, it is settled law that when the Legislature gave under Section 4 (c) of the 1952 Act, power of receiving evidence on affidavit, it gave it as an *independent* power and *not* by way of an *exception* to the general rule of taking evidence *viva voce* in open Court. The Act does not intend this power to be subject to the proviso contained in Order 19, Rule 1 of the Code of Civil Procedure, 1908. It is not the intention of the Act that all the witnesses swearing affidavits should be examined in open Court and subjected to cross-examination, for then the proceedings of the Commission would be interminable. The Act contemplates a quick disposal of the business before a Commission, for otherwise the object behind it might be defeated.

Section 5-A is a new provision, and there is yet no decided case in which its scope, construction and application came up for consideration. A brief survey of the legislative background of this provision will, therefore, be helpful in appreciating its ambit and import.

The genesis of the facility, which has received statutory recognition in Section 5-A, is to be found in the practice of the Tribunals set up, from time to time, under the English Act, to have a preliminary investigation made by the Treasury Solicitor, before commencing the inquiry proper. If the matter to be inquired was short, simple and straight, it presented no difficulty and the Tribunal could commence the inquiry straightaway. But if the matter was immense ; intricate and complex, the Tribunal invariably got a preliminary investigation made, under its direction and control, by the Treasury Solicitor.

Although, in England, there is no statutory provision analogous to Section 5-A, the Treasury Solicitor with a permanent staff, works under the direction and control of the Tribunals constituted under the English Act. The Treasury Solicitor and his staff are permanent civil servants. The Solicitor is supposed to have abundant experience of public administration and sound knowledge of how Government machinery normally functions. Among his staff are Police Officer, experienced and skilled in the investigation of delinquencies. The Solicitor, with the aid of his staff, not only helps the Tribunal in acquiring essential information from Government Departments, but also, under the direction and control of the Tribunal, performs, more or less, the same functions of investigation, which in a criminal case are performed by the Police. In the course of such investigation, the Solicitor examines witnesses, collects, collates and sifts evidential material which would be useful to the Tribunal in finding the facts related to the matters under inquiry. The Solicitor provides copies of their own statements to the witnesses. The Tribunal ensures that the *substance* of those statements is furnished, at the earliest, to all persons interested, including those whose conduct may be in question or whose reputation is likely to be prejudicially affected by the inquiry.

Indeed, some Tribunals which had been constituted under the English Act, have frankly acknowledged that but for the assistance afforded by the Treasury Solicitor and his associates, it would have been impossible for them to accomplish their task effectively and properly.

The following observations made by the Tribunal which was set up in 1948, under the Chairmanship of Mr. Justice Lynskey to probe allegations of bribery of Ministers of the Crown and several public servants in connection with the granting of licences, are in point :

- " 3. The first question we had to decide was one of procedure. A Tribunal appointed under the Act of 1921 is itself responsible for the collection of evidence, taking statements from witnesses, presenting their evidence, then testing its accuracy and finally finding the facts. In a simple case it might be convenient for the Tribunal itself to carry out these responsibilities, but where there are a number of transactions to be investigated, it would not merely be inconvenient but physically impossible within a reasonable time for the Tribunal to undertake these tasks.
- " 4. The service of the Treasury Solicitor, Sir Thomas Barnes, G.C.B., C.B.O. and his staff were placed at our disposal. We also had the assistance of Superintendent A.J. Thorp & other officers of the Metropolitan Police. The Treasury Solicitor with the assistance of the police interviewed all persons whom they thought might be able to give useful information to the Tribunal, and statements were taken from them. These statements were then placed before us, and we directed what further inquiries should be made, and eventually decided which witnesses should be called to give evidence before us.
- " 5. The Treasury Solicitor, on our behalf, to assist us in the presentation of the evidence and the ascertainment of the facts, instructed the Attorney-General, the Right Hon. Sir Hartley Shawcross, K.C.M.P., Mr. Gilbert Paul, K.C., the Hon. H. L. Parkar and Mr. Mark Littman (of counsel). Any witness called or to be called before us who appeared to us to have such an interest in the matter into which we were inquiring as to justify such representations we allowed to be represented by counsel and solicitor. Nineteen witnesses were so represented."

The Royal Commission of Tribunals of Inquiry, 1966, set up in the U.K. strongly recommended the continuance of the practice of the Treasury Solicitor being in constant consultation with the Tribunal. The Royal Commission felt that a few weeks spent more in preparing the material for arriving at the truth is a small price to pay in order to avoid injustice. In its opinion, a preliminary investigation by the Treasury Solicitor and his staff ensures that any allegations and the substance of the evidence in respect of each allegation would be made known to the persons likely to be affected by the inquiry, at the earliest stage, so as to give them an adequate opportunity of preparing their case.

In the words of the Royal Commission —

- " The Tribunal's function is not only to report upon but to inquire into the matters which are disturbing the public. It is the Tribunal alone which is entrusted by Parliament to carry out this important duty on the public's behalf and it is in the Tribunal alone which, for this purpose, the public reposes its confidence. The nature of the task of the Tribunal is, therefore, inescapably inquisitorial. In carrying out this task, it cannot and should not be deprived of the services of Solicitors and Counsel, for, their services are essential. But for that, the Tribunal would have to interview the witnesses personally before hearing their evidence. This would, in our view, be in the highest degree undesirable. The Tribunal must therefore, be in close touch with the Treasury Solicitor for the purpose of directing the lines of investigation and with Counsel for the purpose of being advised upon them . . . Experience has shown that such consultations are essential for the efficient discharge of the task of the Tribunal. Indeed, the Chairman of the last two Tribunals of Inquiry have stated in evidence that without such assistance, their task would have been impossible. The system has not in the past and, in our view, will not in the future, in any way hinder the Tribunals from arriving at impartial findings."

The Royal Commission further went on to recommend that the method in England for the Tribunal to consider the evidence which is collated by the Treasury Solicitor, should also be provided in Scotland, where the practice had been for the Tribunal not to see the statements or precognitions of the witnesses.

Even before the insertion of Section 5-A in the 1952 Act, it was held by a Division Bench of the Punjab High Court in *Allenberry & Co. v. Vivian Bose & others*, I.L.R. (1960) 1 Punjab 416, that a commission constituted under the 1952 Act is competent to get a matter before it investigated by officers nominated by it. In that case, the Commission which had been set up to inquire into the affairs of certain Companies including M/s. Allen Berry & Co. (P) Ltd., made an order appointing Investigating Inspectors to collect material, record, statements which might be volunteered by the witnesses, and then submit a report to the Commission. The validity of this order was challenged by a writ petition under Articles 226 and 227 of the Constitution before the High Court,

inter alia on the ground that the Commission had illegally delegated its powers and functions to the investigating officers. This contention was repelled by the High Court, on the reasoning that the investigating officers had been appointed essentially to assist and help the Commission in the discharge of its inquisitorial functions, by collecting material which it was physically impossible for the Commission, itself, to do. It was further held that such an appointment of Inspectors is not contrary to the wellknown maxim; '*delegata potestas non potest delegare*,' for although an individual clothed with judicial functions cannot delegate the discharge of those functions unless he is expressly empowered to do so, and a deputy cannot transfer his entire powers to another, yet a deputy, having general powers, may, in general, constitute his servant or bailiff for the purpose of doing some particular act, provided of course that such act be within the scope of his own authority. In this connection, it was emphasised that the proceedings before the Commission not being of judicial or quasi-judicial nature, it could not be said that the officers attached to the Commission were incapable of rendering impartial assistance.

The Law Commission of India, in their 24th Report on the Commissions of Inquiry Act, 1952, recommended (*vide* paragraph 17, page 13 of the Report), that a machinery similar to that of the English Treasury Solicitor and his permanent staff, as obtaining in England, be set up to relieve the Commissions of Inquiry of a great deal of preliminary and routine work over which it should not waste its time.

This Report of the Law Commission was considered by the Joint Committee of Parliament, which was set up to examine the Commissions of Inquiry (Amendment) Bill, 1965. The provision which was subsequently inserted as Section 5-A in the parent Act, was contained in cl. (5) of the Bill. This is what the Joint Committee said with regard to cl. (5) :

"The Committee feel that a Commission appointed by the Central Government should have the power to utilise the services of any officer or investigation agency of the State Government and *vice versa* and that the officer or agency whose services are utilised should be enabled to summon and examine persons, require the discovery and production of documents and requisition public records. The Committee also feel that no statement made by a person before any officer or investigation agency whose services are utilised by the Commission shall subject him to, or be used against him in, any civil or criminal proceedings and that the provisions of section 6 of the principal Act should be made applicable to such statements also. The clause has been amended to achieve the above objective."

Ultimately, these recommendations of the Joint Committee were accepted by Parliament and the Amendment Act 79 of 1971 was passed. This Act received the assent of the President on December 30, 1971, and was published in the Gazette of India on December 31, 1971. The Statement of Objects and Reasons for enacting this Amending Act of 1971 says :

"Certain difficulties and deficiencies experienced in the working of the Commissions of Inquiry Act, 1952, were referred to the Law Commission for suggesting suitable amendments to the Act. Taking into account the importance of the Act and the need for a proper system of inquiries, the Law Commission undertook a comprehensive examination of the entire Act and made a number of recommendations in their Twenty-Fourth Report for the revision of the Act in several respects."

Section 5-A, as inserted by Act 79 of 1971 in the parent Act of 1952, reads as follows :—

"5-A (1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services,—

(a) in the case of a Commission appointed by the Central Government, of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be ; or

(b) in the case of a Commission appointed by the State Government, of any officer or investigation agency of the State Government or Central Government with the concurrence of the State Government or the Central Government, as the case may be.

(2) For the purpose of investigating into any matter pertaining to the inquiry, any officer or agency whose services are utilised under sub-section (1) may, subject to the direction and control of the Commission :—

(a) summon and enforce the attendance of any person and examine him ;

(b) require the discovery and production of any document ; and

(c) requisition any public record or copy thereof from any office.

- (3) The provisions of section 6 shall apply in relation to any statement made by a person before any officer or agency whose services are utilised under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.
- (4) The officer or agency, whose services are utilised under sub-section (1), shall investigate into any matter pertaining to the inquiry and submit a report thereon (hereafter in this section referred to as the investigation report) to the Commission within such period as may be specified by the Commission in this behalf.
- (5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusions, if any, arrived at in the investigation report submitted to it under sub-section (4), and for this purpose the Commission may make such inquiry (including the examination of the person or the persons who conducted or assisted in the investigation) as it thinks fit.

Now, the facts material to this discussion may be set out.

This Commission was constituted by the Central Government Notification dated 3-2-1976, issued under Section 3 of the 1952 Act. Office accommodation and the staff were provided about two months thereafter. I then went through the material made available to me, which included published booklets, containing the Memoranda submitted by the Memorialists, Sarvashri M. G. Ramachandran, M. Kalyanasundaram, K. Manoharan, etc., to the President of India in 1972, the replies thereto then given by Thiru M. Karunanidhi on behalf of himself and his companion Ministers. On applying my mind to the material before me, I found that the task entrusted to this Commission, was intricate and of immense magnitude, which would necessitate a preliminary investigation from innumerable sources, persons and places. I was, therefore, of the considered opinion that for a proper and efficient execution of the task entrusted to me, within the time-limit specified in the aforesaid Notification, the assistance of the investigation agencies of the Central and State Governments was essential. Thereupon, I on 12-4-1976, recorded the following order :

“ Keeping in view the immensity of the task entrusted to the Commission, I think it necessary for the proper conduct of the enquiry to have a preliminary investigation made. For this purpose, it is essential to utilise the services of the investigating agencies of the Central Government and of the State Government of Tamil Nadu. Necessary communications, as contemplated under s. 5-A of the Commissions of Inquiry Act, 1952, may therefore be sent to the Central Government and the State Government of Tamil Nadu requesting them to lend the services of their investigating agencies, namely, the Central Bureau of Investigation/Delhi Special Police Establishment, functioning under the control of the Government of India ; and the like agencies functioning under the State Government of Tamil Nadu, to assist the Commission. The Governments concerned may be requested to instruct the said agencies to undertake the investigations assigned by the Commission forthwith and to execute or cause the execution of process/orders which may be issued by the Commission from time to time.

(Sd.) R. S. SARKARIA,
12-4-1976.

Communications were addressed to the Central Government and the State Government for obtaining their concurrence. On receipt of such concurrence, orders were conveyed to the officers nominated for this purpose, as per communications dated May 10, 1976 and May 13, 1976. These officers were :

C.B.I. TEAM (headed by Shri Rajagopalan, S.P.)

1. Shri K. A. Rajagopalan, Superintendent of Police,
2. Shri Sriramulu, Deputy Supdt. of Police,
3. Shri Unnikrishnan, Deputy Supdt. of Police,
4. Shri Narasimhan, Deputy Supdt. of Police,
5. Shri Kothandapani, Inspector,
6. Shri Venugopal, Inspector.

TEAM OF STATE INVESTIGATION AGENCY (headed by Shri G. Ganesan, S.P.)

1. Shri G. Ganesan, Superintendent of Police.
2. Shri J. E. Sriramulu, Deputy Supdt. of Police,
3. Shri T. Gangadharan, Deputy Supdt. of Police,
4. Shri K. Samiraj, Inspector,
5. Shri Manoharan David, Inspector.

Later on, with the approval of the Commission, Shri R. K. Swamy Naidu, Deputy Supdt. of Police, was associated with the C.B.I. Team, and Sarvashri G. S. Chelladurai, Deputy Supdt. of Police, K. Ramalingam, Deputy Supdt. of Police, A. Dasaratha Raman, J. Jeenadathan, R. Seshadri and Balakrishna Menon, Inspectors, were added to the Team of the State Investigating Agency.

By the aforesaid communications, the officers whose services were being utilised by the Commission, were directed—

- (i) to investigate all the Allegations mentioned in the Central Government Notification, dated 3-2-1976, and, for this purpose, summon and examine persons who are conversant with the facts pertaining to these Allegations :
- (ii) to collect all relevant documents ;
- (iii) to submit reports to the Commission on the result of their investigations, as and when completed, not later than 31-7-1976, (This date was subsequently extended).

On May 29, 1976, I called a meeting of all the Investigating Officers, nominated under Section 5-A (1), and explained to them personally the nature of their functions and the scope of their powers with reference to the relevant provisions of the statute. They were told what they should do and what they should not do. It was impressed upon them that they should perform the task entrusted to them with fairness and impartiality, and should never allow their zeal to outrun their discretion. They were further told that they should not resort to coercive or unfair means, and whenever they experienced any difficulty or obstruction in the discharge of their functions under Section 5-A, they should seek further direction from the Commission. It was particularly clarified that they had no powers of search and seizure, and, if they felt it necessary to do so in any particular case, they should seek special authorisation from the Commission in accordance with section 5 (3) of the 1952 Act.

Pursuant to the orders and directions of the Commission under s. 5-A, the aforesaid investigating teams, in the first lot, completed investigations and submitted investigation reports in respect of the nine Allegations, noted as under :

<i>Allegation No.</i>	<i>Date of Submission of Report</i>
Allegation 3 : (Misuse of Tractor)	6—8—1976
Allegation 11 (a) : (Nathan Publications)	6—8—1976
Allegation 11 (b) : (Aerial Spraying)	21—8—1976
Allegation 12 : (Loan to Mr. Kandappan's father-in-law, etc.)	6—8—1976
Allegation 15 : (Globe Theatre)	21—8—1976
Allegation 16 : (Withdrawal of Prosecution etc.,)	6—8—1976
Allegation 17 : (Sugar Scandal)	21—8—1976
Allegation 19 : (Favours to Mr. A. L. Srinivasan)	6—8—1976
Allegation 22 : (Smothering a murder case at the behest of Mr. Anbil Dharmalingam, etc.)	6—8—1976

Notices of these Investigating Reports were given to all the interested persons, including the Respondent-petitioners inviting them to inspect these Reports. The Respondents fully inspected these Reports and prepared verbatim copies of the same with the assistance of their own stenographers, by the 4th September, 1976. It was only after such inspection when the Respondents came to know about the nature and volume of the evidence in respect of these Allegations, that they, for the first time on the 11th September, 1976, raised these objections regarding the validity and admissibility of the Investigation Reports, although they were informed on the very first sitting of the Commission held on the 14th May, 1976, that orders had been issued under s. 5-A, directing certain officers of the Central and State investigating agencies (lists of whose names were then handed over to the Counsel for the Respondents and the Memorialists) to investigate the Allegations under inquiry.

The stage is now set for dealing with the objections raised by the Respondents.

It is proposed to take up the objections in the same order in which they are set out above.

Legal objections (i) (a) and (i) (b) are, that the orders for investigation were issued, prematurely without hearing the 'parties,' or persons interested.

I find no merit in these objections.

A plain reading of section 5-A would show that there is nothing in the language of this provision which restricts the exercise of the power given therein to any particular period of time. The exercise of this power is not dependent upon the determination or existence of any preliminary, jurisdictional fact. Nor does this provision expressly or by necessary implication, require the Commission to hear the persons 'interested' before making an order for investigation. The word 'may' shows that the exercise of the power is discretionary. While invoking this enabling provision, the Commission does not function as a Court or a quasi-judicial Tribunal. The power is purely administrative. The investigation envisaged by the Section is intended merely to assist the Commission in the performance of its inquisitorial task. Whether a matter before the Commission should or should not be got investigated by the machinery provided in Section 5-A and what should be the subject, extent and manner of that investigation, are questions, entirely for the subjective satisfaction of the Commission. The legislative history of this provision which I have already surveyed in detail, shows that such investigating machinery acts as an auxiliary to the Commission, and is, generally, brought into motion at the earliest stage of the proceedings.

The scheme of the 1952 Act contemplates expeditious disposal of its task by the Commission within the specified time-limit. In terms of Section 5-A, what the officers or the agencies of the Government, appointed to assist the Commission, are required to do is "investigation" and to produce an "investigation report." "Investigation" is not defined in the 1952 Act. While it can safely be said that "investigation" and "inquiry", in the context of the 1952 Act, are not mutually exclusive terms, the scope of the "inquiry" is wider; it includes "investigation" and something more. "Investigation," particularly in the initial phase, assumes more the character of a minute survey, reconnaissance, exploration, detection of and search for evidential matter. It will therefore, not be wide off the mark to say that "investigation" is that preliminary stage of the "inquiry," during which evidential material is systematically traced, discovered, collected and collated. The substantive stage of the inquiry is reached when the Commission examines all the matter collected by the investigating officers, and also that received by the Commission, itself, in response to the notices/notification under Rule 5 (2), with a view to bringing the same in evidence, or otherwise in use as evidential material and then appraising it for reaching a finding of fact.

Thus an investigation report Submitted under section 5-A provides the Commission with a rudder and compass with the aid of which it can avoid a fishing, random probe and direct the inquiry through well-indicated channels. Intimation of the investigation report, further, enables the persons whose conduct is in question or whose reputation is likely to be prejudicially affected to know, with full particularity, the allegations that they have to meet at the inquiry. Furthermore, if the investigation report shows that a certain Allegation is groundless or is foredoomed to failure for want of evidence, and on enquiry under sub-section (5) of s. 5-A, the Commission is satisfied about the correctness of the Report, it can summarily dismiss that Allegation and drop further proceedings in respect thereof.

Keeping in view the language of Section 5-A, its legislative background, its object and scheme, I have no hesitation in holding that a Commission is competent to make an order invoking Section 5-A (1), without hearing the "parties" or persons interested, on its own subjective satisfaction, at any time after the publication of the Notification under Section 3. Indeed, the facility provided in Section 5-A can be put to optimum use only if it is invoked at the earliest, after the constitution of the Commission.

In view of what has been explained above, Legal Objections (i) (a) and (b) are found wholly untenable, and are therefore rejected.

This takes me to the Legal Objection, (i) (c).

The contention is that under Section 5-A the Commission could order only a local investigation into any matter, fact or issue arising out of any definite matter of public importance under inquiry before it ; that it could not make over *all* the 28 Allegations entrusted to it for inquiry under the Government Notification, to the officers/investigation agencies of the Central and the State Governments because such an order would amount to wholesale delegation of its powers by the Commission.

This contention is mis-conceived. Firstly, there is nothing in Section 5-A, which restricts the use of this facility only to any "fact or issue" arising out of any subject-matter under inquiry before the Commission. The expression "any matter" occurring in Section 5-A is wide enough to include any principal matter which may have been entrusted to the Commission for inquiry by the Government Notification issued under Section 3. The word "matter", used in singular, would, according to the well-recognised principle of legal interpretation, include its plural, also. (See section 13 (1) of the General Clauses Act, 1897). Secondly, it has been settled by a bead-roll of authorities (including those of the Supreme Court) that a Commission set up under the 1952 Act is neither a Court, nor a quasi-judicial Tribunal discharging judicial or quasi-judicial functions. Its main task is to find facts through an inquisitorial, investigatory process. Neither the Code of Criminal Procedure, nor the Evidence Act applies to the proceedings before it. (see *Rama Krishna Dalmia v. S. R. Tendolkar*—1959 SCR. 279 = A.I.R. 1958 S.C. 538). It can, subject to the statutory provisions contained in the Act and the Rules framed thereunder, devise its own procedural regulations. (Section 8).

Nomination of investigating officers or agencies under Section 5-A is done essentially to assist the Commission in the discharge of its inquisitorial functions. Such officers/agencies work under the direction and control of the Commission. The effective control of the Commission over the investigation required to be made by the nominated officers/agencies is not lost even after the passing of an order under Section 5-A. The investigation report, including the conclusions, if any, given therein, is not binding on the Commission. It can be made use of only if, after making the inquiry contemplated by Sub-section (5), the Commission is satisfied with regard to the correctness of the facts stated therein. This being the case, no question of delegation of its powers and functions by the Commission arises.

As rightly pointed out in *Allen Berry & Co. v. Vivian Bose and others*, *ibid*, the maxim "*delegata potestas non potest delegare*," (a delegated power cannot be delegated), as no applicability to such a case. Assuming—but not holding—that the utilisation of the machinery provided in Section 5-A does involve some delegation of its investigatory functions by the Commission, then also, the same is allowed by the Statute, and the aforesaid maxim is not attracted.

Legal Objection (i) (c), thus, stands over-ruled.

Legal Objection (i) (d) is frivolous. It has been stated only to be rejected.

Legal Objection (ii) is to the effect, that statements recorded by the investigating officers under Section 5-A, not being on oath or solemn affirmation, cannot be used as *evidence* in the case before the Commission. The point sought to be made out is that the material collected by the investigating officers cannot be used for proof or disproof of any disputed fact or allegation because it does not fall within the definition of the term "*evidence*" given in Section 3 of the Evidence Act.

The contention is based on false assumptions.

The *first* of such assumptions is that the Evidence Act, in terms, applies to proceedings before the Commission. This supposition is not correct. As mentioned earlier, neither the Evidence Act, nor the Code of Criminal Procedure, nor the Code of Civil Procedure, as such, applies to proceedings before the Commission. Therefore, *material* which may not be strictly relevant as "*evidence*" under the Evidence Act, but has a bearing on the matters under inquiry, can be taken into consideration by the Commission in reaching a finding of fact.

The *second* wrong assumption that appears to have been made is, that under the Evidence Act that material only which strictly answers the definition of "*evidence*," oral or documentary, given in that Act, can be used to prove the existence or non-existence of a fact. The definition of the term "*proved*" given in Section 3, Evidence Act, itself, demonstrates the fallacy of this argument. According to that definition, "a fact is said to be "*proved*" when, after considering the *matters before it*, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of a particular case, to act upon the supposition that it exists." "*Matters before it*," in this definition, include *material* which does not fall within the definition of "*evidence*" given in that Act. The Legislature advisedly refrained from the use of the word "*evidence*" in the definition of "*Proved*" because the narrow definition of this

word given in the Evidence Act, does not cover all the matters which are taken into consideration for the purpose of determining a fact in issue or a relevant fact. For instance, the result of a local inquiry or inspection made by the presiding officer of a Court, may be taken into consideration by the Court in determining a matter in dispute before it, even though the note embodying that result may not answer the definition of "evidence" given in the Evidence Act. True, that the Court cannot pass judgment solely on the impression formed by it at the local inspection and come to a conclusion contrary to the "evidence" in the case. Nevertheless, it can take that impression into account in adjudicating the dispute before it. Similarly, *admissions* made in pleadings, or orally during examination under Order 10, Rules 1 and 2, Civil Procedure Code, do not fall within the definition of "evidence" under the Evidence Act, but they are "matters" which can be legitimately taken into consideration by the Court in determining a relevant fact. Other instances of "matter" which is not "evidence," are : *material objects*, other than a document produced in Court: the *demeanour* of witnesses, and certain *notorious* facts of which under Sections 56 and 57, Evidence Act, the Court can take judicial notice. Thus, even under the Evidence Act, "matters" which are not "evidence" can be taken into consideration for proof or disproof of a relevant fact, more so by a Commission in an inquisitorial proceeding under the Commissions of Inquiry Act, 1952.

While devising procedural regulations under Section 8, at its preliminary sittings, the Commission had clarified that technical rules of the Evidence Act do not govern the recording and admissibility of Evidence before the Commission (Regulation 19). But in matters not covered by the statutory provisions, the broad, fundamental principles, as far as practicable, may be taken as a guide. Now, the definition of "evidence" under the Evidence Act is, as already noticed, technical, narrow and incomplete. In its comprehensive, general sense conveyed by the juristic principle behind the definition of "Proved" in Section 3 of the Evidence Act, all matter or material which can be legally taken into consideration by a Court for determining a fact, is "evidence."

Considered in the light of this broad enunciation, it will not be wrong to say that the investigation reports of the investigating officers/agencies appointed under Section 5-A (1), if found factually correct to the satisfaction of the Commission, can be validly used as *evidence* by it for finding a fact in question before it.

Be that as it may, a clear indication is available in the language of s. 5-A, itself, that the "investigation report"—which expression includes statements recorded by the investigating officer—can be used for basing a finding of fact, even if such statements are not "evidence" in the strict, technical sense of the term. Such an indication is to be found in sub-section (3) which, for the purpose of the immunity available under Section 6, equates a statement made by a person before an officer or agency whose services are utilised by the Commission under Section 5-A (1), with a statement made before the Commission.

The further question that crops up is : Do the statements recorded by such officer/agency, stand, in terms of probative value, on an inferior footing than the evidence taken on affidavits or on examination *viva voce* before the Commission, merely for the reason that those statements are not on oath or solemn affirmation ?

In my opinion, the answer to the question must be in the negative. As rightly explained by the learned Additional Solicitor-General, such statements, in terms of their evidential value, stand on a *different*, and *not* on an *inferior* footing than the sworn evidence taken or secured by the Commission. For assessing the evidential value of an investigation report made under s. 5-A, it may be convenient to divide it into three parts.

Under the first part would fall the *documentary material* collected by the Investigating Officer. In collecting such material, the position of the investigating officer is substantially the same as of a ministerial agent or officer executing an order or process issued by the Commission under s. 4 (b) and (d). Such of this documentary material which is relevant and is of an undisputed or unimpeachable character, or consists of official records falling within the procedural Regulation 18, framed by the Commission, can be straightaway used as evidence by the Commission. Other relevant documentary material which has been referred to or relied upon by a witness in his sworn statement or oral testimony, can also be used as evidence. Other relevant documents, about the authenticity of which the Commission is satisfied, can also be used as evidence in the case. In short, the documentary material collected and produced by the investigating officer for the inspection of the Commission, would satisfy even the narrow definition of "documentary evidence" given in s. 3 of the Evidence Act.

The second part of an investigation report under s. 5-A, would include *statements* recorded by the officer/agency whose services being utilised by the Commission. The use of such statements is not subject to the restrictions and inhibitions from which a statement recorded by a police officer in the course of investigation under the Code of Criminal Procedure, suffers. Legally, it can be used as evidential material, for all purposes, by the Commission in discharging its fact-finding functions ; *a fortiori* it can be used to corroborate or contradict the sworn evidence of its author, taken or produced by the Commission, itself, in any mode permissible under the 1952 Act.

Under the third part of the investigation report, would fall the summing up of the result of the investigation, including the conclusion, if any, drawn by the investigating officer. The words "if any" occurring in sub-section (5) of the Section show that it is not necessary for the investigating officer to give his conclusion. Since the entire investigation under s. 5-A is subject to the direction and control of the Commission, the investigating officer can be restrained from giving his own opinion or comment as to the evidential value of the material collected by him in the investigation report. The evidential value of this part of the investigating report, depends upon various factors, including the nature of the matter investigated, the care or thoroughness with which the investigation is conducted, the reasons given by the investigator in support of his conclusions, if any, etc. If the matter to be investigated is a matter of science or skill or art or trade, and the report is rendered by an expert on the subject, it would be admissible as 'evidence' even under s. 45, Evidence Act. For instance if the matter to be investigated is the numerous entries in the account-books of a company, and the investigating officer appointed under s. 5-A to investigate is an expert or specially skilled in accountancy, his investigation report would be admissible as evidence before the Commission. The opinion expressed in an investigation report submitted by an officer under s. 5-A, who is not covered by the broad principle underlying s. 45, Evidence Act, albeit evidential material does not stand on the same footing as substantive 'evidence.'

The legal position that emerges from the above discussion is, that all parts of an investigation report made by Government Officer/agency whose services are utilised under s. 5-A, can, if the Commission is satisfied about the correctness of the facts stated therein, be used as evidential material and taken into consideration by the Commission for finding a fact in question.

Legal position apart, it must be remembered that the Commission alone has been entrusted to carry out this important task by virtue of the Government Notification dated 3rd February, 1976, on public's behalf. It is in the Commission alone that the public has, acting through its elected representatives, reposed confidence. In view of this, as a matter of prudence, I have, in the case of those Allegations which amount to a Criminal charge, or, are akin thereto, decided to base my findings mainly on evidence taken by myself either on oral examination or on affidavits or by both the methods. Such evidence will of course include documents duly tendered in evidence before the Commission, or duly made a part of the Commission's record, irrespective of whether they were collected through the officers or the agencies whose services are being utilised under s. 5-A, or directly by the Commission. However, the statements recorded by the investigating officers under s. 5-A may be used to corroborate or contradict the sworn evidence taken or procured by the Commission, itself.

For the foregoing reasons, I negate all the legal objections raised by the respondents-petitioners.

Now I come to the objections in point of fact.

OBJECTIONS IN POINT OF FACT :

The main objection is that it was improper for the Commission to appoint these police officers of the Central and State Governments to investigate under Section 5-A because —

- (i) They had already investigated these very matters, illegally, before their appointment by the Commission ;
- (ii) They are employees of the Central or State Governments, and, as such, interested and biased against the respondents-petitioners ;
- (iii) They have procured affidavits/statements from the witnesses by the use of unfair means and questionable methods, such as duress, threat, tutoring etc. .1

These objections are based on premises which are factually incorrect. So far as Allegation 11 (b) (Aerial Spraying) is concerned, previously in 1973, a criminal case was registered against Hari Bhaskar and others in respect of offences under ss. 120 B, 161, 162, 163 etc., Penal Code, and s. 5 of the Prevention of Corruption Act. That case was investigated by Shri R. P. Kapur, Deputy Superintendent of Police of the C.B.I. Shri Kapur is not one of the officers, whose services are being utilised by the Commission under s. 5-A. The C.B.I. team assisting the Commission, is headed by Shri Rajagopalan, Superintendent of Police. Shri Rajagopalan was examined, as a witness, by me. He categorically testified that he was not in any capacity associated with the investigation conducted by Shri R. P. Kapur under the Code of Criminal Procedure, nor did any other officer in the investigating team assisting the Commission, take part in that investigation under the Code. It is true that almost the entire documentary evidence before the Commission in respect of Allegation 11 (b) was collected by Mr. R. P. Kapur during investigation under the Code of Criminal Procedure, and has been further procured from him by the investigating team assisting the Commission under s. 5-A. It is further true that the ready information and the

other material procured from Mr. Kapur greatly facilitated the task of the team (regarding Allegation 11 (b)) whose services are being utilised by the Commission. But there was nothing improper or unlawful either in the original collection of this evidential material by Mr. R. P. Kapur, or in its further procurement from him by the investigating team assisting the Commission.

Equally unfounded is the insinuation that these investigating officers appointed under s. 5-A, being in the service of the Central and State Governments, are not expected to be impartial in the investigations. As pointed out already, none of these officers had anything to do with the investigation under the Criminal Procedure Code or under any other enactment. They had no axe of their own to grind against the respondents. Moreover, the investigation carried out by them has been subject to the effective control and direction of the Commission, and the facts/statements in the investigation report cannot be used as evidential material unless the Commission is satisfied about their correctness. For arriving at such satisfaction, all those persons whose evidence was taken either on affidavits or by oral examination, subsequently to the 11th September, 1976, were questioned as to whether any statements/affidavits were procured from them under coercion, threat, inducement or by the use of other questionable methods, such as tutoring, etc. All of them have categorically sworn that they had made their statements/affidavits voluntarily, and truthfully.

Under s. 5-A, the Commission can utilise the services of officers or investigating agencies of the State and the Central Government, only. Under that section, it cannot appoint a private person to investigate any matter before the Commission. Furthermore, it is a fact-finding enquiry. The Central Government or State Government, is not in the position of a prosecutor or a plaintiff. Even the Memorialists cannot be said to be *dominus litis*. As explained earlier at the preliminary hearing on the 14th May, 1976, the persons whose conduct comes in for inquiry cannot be deemed to be accused persons or defendants. There is no *lis*. The dominant character of the proceedings is inquisitorial. So long as the Notification under s. 3 is operative, the Commission cannot divest itself of the duty to collect, relevant evidential material in all legitimate ways permissible under the law. As a matter of fact, the Central Government is not playing an active role. Although it is the "appropriate Government" and, as such, entitled, under Rule 5 (5) read with s. 8-C, to examine witnesses, it has not chosen that course. It has not furnished any list of witnesses; nor has it led or produced any evidence. All the witnesses whose evidence has been taken or procured by the Commission or who have been examined by the investigating officers under s. 5-A, are Commission's witnesses.

The allegation that these investigating officers illegally searched houses and seized documents and forced the witnesses under threat to sign ready-made or tutored statements, is vague and general. By my order, dated September 14, 1976, I had issued notices to the Respondents-petitioners to particularise these allegations by filing a duly sworn affidavit. They have not complied with that order; instead, on the 20th September, 1976, an unattested "affidavit" was filed by Shri Karunanidhi, and, even in this affidavit, the required particulars were not given. With the solitary exception of Shri Vaithialingam, no name of any witness in relation to Allegation No. 11 (b) (Aerial Spraying), was disclosed. Nevertheless, I, while calling affidavits from the 19 persons, who had been examined by the investigating officers, called upon them to depose with regard to the truth or otherwise of these allegations. All those 19 persons have emphatically refuted the correctness of these general allegations levelled against the investigating officers. This was also put to the witnesses, including Shri Vaithialingam, who have been orally examined with regard to Allegation 11 (a) (Nathan Publications), 11 (b) (Aerial Spraying), 15 (Land for New Globe Theatre), and 17 (Sugar Scandal), whether the statements/affidavits filed by them before the Commission were procured from them by the use of unfair means. All of them testified in unqualified terms that they had voluntarily filed their affidavits before the Commission in response to the notices/notification issued by the Commission.

In his unattested "affidavit," Shri M. Karunanidhi has taken objection to what finds mention in para 3 of the Memorandum of Instructions circulated to the Investigating Officers. It may be noted that this Memorandum is only a minute or summary of the verbal instructions which I had given in detail to the Investigating Officers at Madras on May 29, 1976. Paragraph 3 of that Memorandum is to be appreciated against the background that at that time, the period of notices/notification issued by the Commission under Rule 5 (2) had not run out. Keeping that in mind, one of the officers in that meeting asked that if a witness told the investigating officer that he was desirous of filing a statement/affidavit before the Commission in response to the notice/notification under rule 5 (2), would it be still necessary for the investigating officer to record his statement. In that context, it was clarified that if a witness volunteered to file an affidavit, he should be told to send his affidavit duly sworn to the Commission directly, and, even in such a situation, the investigating officer would be required to record his statement. I do not think, there was anything improper in this instruction because the last date fixed by the Commission for filing statements/affidavits in response to the notices/notification under Rule 5 (2) was July 12, 1976, which was later extended to July 15, 1976, while these instructions were given on May 29, 1976.

Be that as it may, as explained by Shri Rajagopalan, Superintendent of Police, in his deposition before the Commission, no such occasion arose where a witness had to be directed by any

of the Investigating Officers, to file an affidavit before the Commission, directly. The witnesses, who have been orally examined before the Commission, have also corroborated Shri Rajagopalan on this point. As a matter of fact most of the witnesses were examined by the Investigating Officers long after the expiry of the date fixed for filing statements/affidavits under Rule 5 (2). The chart given below relating to Allegation No. 11 (b), Aerial Spraying will amply bear out this point :

<i>Sl. No.</i>	<i>Witness' Name</i>	<i>Date of oral examination by Commission</i>	<i>Date of Affidavit</i>	<i>Date of Examination by investigating officer</i>
1.	CW-1 V. Rajagopal	20—9—1976	29—6—1976	10—8—1976
2.	CW-2 R. H. Captain	22—9—1976	9—7—1976	10—8—1976
3.	CW-3 K. N. A. Krishnan	23—9—1976	30—9—1976	10—8—1976
4.	CW-4 S. A. Ramachandran	24—9—1976	—	10—8—1976
5.	CW-5 H. P. Rao	25—9—1976	25—6—1976	11—8—1976
6.	CW-6 M. Vaithialingam	27—9—1976	8—7—1976	9—8—1976
7.	CW-7 P. N. Vedanarayanan	28—9—1976	9—7—1976	11—8—1976
8.	CW-8 R. S. Cambata	4—10—1976	1—7—1976 (Statement)	—
9.	CW-9 N. Hari Bhaskar	5—10—1976	9—7—1976	—

From the sworn evidence of the witnesses taken or procured by me, I am entirely satisfied that the officers assisting the Commission under s. 5-A have conducted the investigations entrusted to them, impartially, fairly and with utmost rectitude. I am further satisfied beyond all manner of doubt, that the investigation reports, particularly the statements of the witnesses incorporated therein, have been correctly and faithfully recorded. The allegations made against these investigating officers are baseless.

All said and done, the objections raised by the respondents against the validity and use of the investigation reports have become largely academic, because in respect of all the important Allegations, I have decided to take the evidence of all the material witnesses either on affidavit or on *viva voce* examination, or by both the methods.

For all the reasons aforesaid, the objection petition fails and is dismissed.

Dated, New Delhi, the 20th November, 1976

(Sd.) R. S. SARKARIA,
Commission.

Announced, today at 11 a.m. at an open sitting in my chamber in the presence of Mr. Harish Chandra, Central Government Counsel.

(Sd.) R. S. SARKARIA.

22—11—76.

PART—II

Report on
Allegation Serial Nos. 3, 11(*a*), 11(*b*), 12, 15, 16, 19, 22(*c*) and 22(*d*)
and summary

PART II

Chapter I

ALLEGATION SERIAL No. 3.

MISUSE OF TRACTOR BY SHRI M. KARUNANIDHI.

This Allegation as extracted in the Annexure to the Central Government Notification, dated 3rd February 1976 is as under :

“ Memorandum of Shri M. G. Ramachandran.

Tractor for the Farm—But donation Coimbatore Agricultural College—Suspension of operation of Motor Vehicles Act/Registration of Vehicles.—During his world tour the Chief Minister is believed to have visited London where he was received by Mr. and Mrs. Sivasailam of Simpson. It is believed that the Simpsons have an associate concern at London, viz., M/s. Wallace Cartwright, 55/56, St. James Street, London, S.W. 1. It is believed that the said concern paid for the purchase of modern tractor from M/s Massey Ferguson, London. However, public had been made to believe that it is gift by Massey Ferguson, London, to Tamil Nadu. Is it within the rights of the State Chief Minister to accept presents from foreign companies without the consent from Government? Such a practice will lead to serious depletion of nation's wealth, since what is advertised to be a present may be depletion of nation's foreign exchange through non-banking channels.

The said Tractor bearing chassis No. 01/166291/015/UAO, Engine No. 22990D was imported under Bill of Entry D/1705, dated 30th April 1971 per “ s.s. Clan Maclean ” against customers clearance permit No. C/J/2335228/N/NM/37/H/31-32, dated 24th December 1970 and cleared by Sri Rama Vilas Customers House Agents was not registered with D.C., Traffic and Licensing, Madras. The Customs Clearance Permit appears to have been issued by I.C.C.I., Madras, as could be seen from the fact that one Muthukumaraswami Gounder of Karattupalayam, Thondamuthur Post, Coimbatore District had also imported one tractor bearing No. 164829/Engine No. 151US 22775D against Import Licence bearing No. P./S2332587/N/MN/H-31-32, dated 20th January 1971. This tractor has been registered with Regional Transport Officer, Coimbatore against TNC 489, dated 18th June 1971. But the tractor imported against C.C.P. No. C/J/2335227, dated 24th December 1970, has been registered with Regional Transport Officer Coimbatore against TNC 2798, dated 8th May 1972. The entries show that the vehicle were inspected by the Motor Vehicles Inspector, L. V. S. Vasan on 8th May 1972. This registration is shown as a new one but it has not been mentioned that this was an imported tractor whereas the tractor standing in the name of Muthukumarasami Gounder is shown as an imported tractor. In the latter case the Import Licence number is also shown in the R. C. Register. The Chassis number of the Tractor imported under C.C.P. is shown as 166291 and the Engine No. 152 VA22990D. It is said to be under the Farm Supervisor attached to the Coimbatore Agricultural College, Coimbatore. Enquiries show in the local papers of Coimbatore it was published a few days before the registration of the Tractor that the above matter tractor was an award made by M/s. TAFE, Madras made to the institution at a special function got up for that purpose. From the information thus gathered, it appears that the said tractor might have been used in the period between March 1971 and May 1972 without getting the name registered with any of the Regional Transport Officers and it may be that the same might have been initially registered either with the Regional Transport Officer, Saidapet or with the Regional Transport Officer, Thanjavur and this fact should have been suppressed when the vehicle was registered with the Regional Transport Officer, Coimbatore. This inference stands to reason from the fact that—

(1) The Tractor is shown as a new registration by Regional Transport Officer, Coimbatore; and

(2) if it were to be so, there is no reason why it was not shown as an imported tractor offered for new registration : and

(3) Why should it be made circulated in papers that it was an AWARD made by TAFE, Madras.

It all smells a rat. This warrants an intensive enquiry in the Tanjore D.I.H. and Tanjore also.

To what extent this tractor was utilised in the Farm of C.M.? The people in Tanjore are aware of moving of this tractor in C.M.'s Farm Land.”

The investigating officers whose services are being utilised under Section 5-A have submitted their investigation report. The evidential matter collected by them reveals this picture :

Shri M. Karunanidhi (former Chief Minister of Tamil Nadu) on July 17, 1970 visited the factory of M/s. Massey Ferguson Company at Coventry in U.K. He was accompanied by Shri Venkataramanan, Finance Secretary. At the factory, the Chairman and the Managing Director of M/s. Tractors and Farm Equipments Limited (TAFE), Madras, received him along with the other Executives of the Company. M/s. TAFE, Madras manufacture Ferguson Tractors in collaboration with M/s. Massey Ferguson Company, U.K. To commemorate the Chief Minister's visit Massey Ferguson Company, presented to him one MF-135 Tractor, Shri Karunanidhi announced voluntarily there and then that he would present that tractor to the Agricultural College in Tamil Nadu. These facts have been spoken to by Shri A. Sivasailam, Managing Director of TAFE, Madras and are also apparent from the relevant records.

The gift was confirmed in writing by Massey Ferguson Company, in their letter, dated 14th September 1970 to M/s. TAFE, Madras and they were requested to obtain import licence from the Government of India to enable shipment of the tractor to India on a "free of charge basis". The Massey Ferguson Company, U.K. subsequently sent in their *proforma* invoice for a tractor and spare parts—c.i.f. value £1195-15s-3d under letter, dated 30th September 1970, addressed to Shri Sivasailam. Thereupon, Shri Sivasailam wrote to the Finance Secretary, Government of Tamil Nadu on 13th October 1970 requesting the Government to obtain the necessary import customs clearance permit and Letter of Authority in favour of M/s. TAFE, Madras in respect of the gifted tractor so as to enable its shipment to Madras. The Finance Secretary, Tamil Nadu wrote a letter, dated 21st October 1970 to the Chief Controller of Imports and Exports, New Delhi requesting him for the issue of the Customs Clearance Permit and Letter of Authority. On receiving that letter on October 26, 1970, the Chief Controller enquired from the Secretary to the Government of Tamil Nadu, whether the tractor was for the personal use of the Chief Minister or for the State. The Finance Secretary, Tamil Nadu replied by his letter, dated 30th November 1970, that the tractor gifted by Massey Ferguson Company, would, in turn, be presented by the Chief Minister to the Agricultural College and Research Institute, Coimbatore, a Government Institution. The Chief Controller referred the matter to the Ministry of Home Affairs on 16th November 1970. The Home Ministry replied that they had no comments. Consequently, on 24th December 1970, the Chief Controller of Imports and Exports issued a Customs Clearance Permit valid up to 24th April 1971 for importation of 1 MF Tractor with spare parts valued at Rs. 21,525 by the Chief Minister of Tamil Nadu on the condition that the tractor would be passed on to the Agricultural College and Research Institute, Coimbatore. The Chief Controller also issued a Letter of Authority, dated 24th December 1970, in favour of M/s. Tractor and Farm Equipments Ltd., Madras. These were sent by him to the Secretary, Finance Department, Government of Tamil Nadu on 26th December 1970. The Finance Secretary received these documents on 29th December 1970 and forwarded them to the Managing Director, TAFE, Madras on 31st December 1970, who on 4th January 1971 transmitted the documents to his Sales Commercial Manager for further action. The Manager on 12th January 1971 wrote to M/s. Wallace Cartwright and Company, London asking them to initiate immediate action for the shipment of the tractor to Madras. M/s. Wallace Cartwright is an associate of Simpson and Co., Madras. Simpson and Co., is one of the concerns controlled by Shri A. Sivasailam.

M/s. Wallace Cartwright and Co., who are also shipping agents, informed the Sales Commercial Manager, TAFE, Madras on 29th January 1971 that the tractor would be shipped by the vessel, "s.s. Clan Maclean", which would sail from U.K. on 4th March 1971 and was expected to arrive at Madras on 22nd April 1971. The Commercial Manager, TAFE, conveyed this information to the Tamil Nadu Government and also sent the shipping documents to the Marketing Manager, TAFE who in turn forwarded these documents to M/s. Sri Rama Vilas Services, Clearing Agents. To satisfy the Customs authorities, the Clearing Agents, M/s. S.R.V.S., obtained a letter from the Deputy Secretary, Finance Department, Tamil Nadu Government that the tractor would be donated to the Agricultural College, Coimbatore.

The tractor arrived at Madras on 21st April 1971 in four packages and was cleared by the Customs on 5th May 1971. The four packages were sent to the Product Training Centre, about 40 Kms. from Madras city, on 10th May 1971. The tractor was assembled on 13th May 1971 and on 14th May 1971 it was filled with diesel, transmission oil, etc., for being moved to Jay Auto Services, for checking and testing electrical fittings. It was actually moved on to Jay Auto Services only on 28th May 1971. Although the work was completed the same day, the tractor moved out of Jay Auto Services only on 28th June 1971. The Publicity Manager, TAFE then asked M/s. Stanes Motors (S.I.) Ltd., Coimbatore to arrange to take the tractor to Coimbatore. M/s. Stanes Motors deputed tractor driver, K. Wazir on 27th June 1971. He reached Coimbatore with the tractor at about 5 p.m. on 2nd July 1971.

Even though the University authorities learnt about the tractor having reached Coimbatore on 14th July 1971, there was some delay on their part in fixing up the date for the formal presentation of the tractor. Eventually, the ceremony was held on 26th September 1971, at which both the Chief Minister and the Governor of Tamil Nadu were present.

After the tractor had been taken over by the Agricultural University, there was further delay in getting it registered. Although the University authorities had paid the registration fee on 29th March 1972, the tractor was actually registered on 8th May 1972 by the Regional Transport Officer, Coimbatore and given the registration number TNC 2798.

It would thus, be clear that although the tractor arrived at Madras in April, 1971, it was presented to the University only on 26th September 1971 and eventually registered on 8th May 1972.

As against this, another imported tractor, which was a gift to one Shri Muthukumaraswamy Gounder of Komarapalayam from his son-in-law who was in U.K., was cleared by the Customs on 20th March 1971 and was registered by the Regional Transport Officer, Coimbatore, on 19th June 1971 and given registration number TNC 489. It seems that it was on account of this inordinate delay in registration of the tractor gifted by Shri Karunanidhi to the University, the Memorialist suspected that the matter "all smells a rat" and "warrants an intensive enquiry".

The Investigation Report reveals that Shri Karunanidhi possesses 13 acres of wet land in village Agasthinallur of Tiruvarur Taluk in Tanjore District. Shri Samiappa Pillai who is looking after these lands for the last ten years, has made a statement that occasionally he had been engaging tractors for ploughing these lands, which were either hired from the Agricultural Department or from local tractor-owners. The President of the Panchayat Board, Kattur, Shri K. Sundararajan, has also corroborated this. This is another circumstance which might have created suspicion that the imported tractor was actually being used on Shri Karunanidhi's farm during the long interval between its arrival in Madras and its presentation to the Agricultural University, Coimbatore.

The Investigating Officers have collected enough evidence, both oral and documentary, to verify the actual movements of the tractor right from its arrival in Madras till it reached Coimbatore. The only long gap in this movement chart is between 14th May 1971 and 28th June 1971. There is however, no evidence to show that during this period, the tractor was moved to Tiruvarur, the native place of Shri Karunanidhi. The period from 14th May 1971 to 28th June 1971 was not the ploughing season in Thanjavur District at that part of the year. Moreover, the correspondence exchanged between the Publicity Manager of TAFE, Secretary to Government, Agriculture Department, Tamil Nadu, M/s. Stanes Motors (S.I.) Ltd., Coimbatore and the Agricultural University, Coimbatore, indicates that efforts were being made to organise the presentation function at an early date and it was being put off only to suit the convenience of the two V.I.P.s, the Governor and the Chief Minister.

It is true that comparatively the interval between the import and registration of the tractor in question was much longer than that which elapsed between the import and registration of the gift tractor received by Shri Muthukumaraswamy Gounder. But this unusual delay in registration of the tractor by itself does not unerringly lead to the inference that it was being misused in Shri Karunanidhi's farm.

With regard to the allegation in paragraph 1 of the Memorandum of Shri M.G. Ramachandran that M/s. Wallace Cartwright paid for the purchase of the tractor from M/s. Massey Ferguson, London, an affidavit has been filed by M/s. Wallace Cartwright refuting this allegation. Apart from this, the evidence collected by the Investigating Officers conclusively establishes that the tractor was actually a gift by M/s Massey Ferguson to Shri Karunanidhi who in keeping with his announcement at the time of accepting the offer made by the manufacturers in England, did ultimately gift it to the Agricultural University, Coimbatore.

In view of what has been said above, I hold that Allegation Serial No. 3 has not been substantiated.

Chapter II

ALLEGATION No. 11 (a)—NATHAN PUBLICATIONS *Against*

SHRI ANBIL DHARMALINGAM, *Former Minister*

AND

DR. V. R. NEDUNCHEZHIAN, *Former Minister.*

The allegation made by Shri M. G. Ramachandran and Shri M. Kalyanasundaram, memorialists as annexed in the Central Government Notification No. S. O. 74/E, dated 3rd February 1976, reads as follows :—

In the memorandum of Shri M. G. Ramachandran—

“Serial No. 11.

Shri Anbil Dharmalingam

Thiru Anbil Dharmalingam, Minister, hails from a village, ANBIL, in Tiruchirappalli District. For the past 25 years, he was only living with Thiru Kasthuri Chettiar, B.Com. (Hons.) and his brother Thiru Pandurangam, in the house just opposite to Raja Talkies, Tiruchirappalli. It is generally known as Nathan Press. Before the D.M.K. came to power in 1967, the group of Thiru Pandurangam, Kasthuri and Anbil Dharmalingam, were not affluent. Of course, Nathan Press was in existence and another concern of manufacturing bricks at Anbil was also in existence.

A new firm known as Nathan Publications was started after formation of D.M.K. Ministry. The Government took over the rights to publish books for the schools. Nathan Publications were appointed as sole distributors of school books. Scarcity of books was created and the children going to elementary schools had to pay a premium over the listed price. The Nathan Press group had no previous experience in the book publication. This is just one instance of open participation in advancement of activities of Nathan Press group by Thiru Anbil Dharmalingam.”

In the memorandum of Sri M. Kalyanasundaram—

Mr. Anbil Dharmalingam—The following charges are levelled against the Minister for Agriculture, Shri Anbil Dharmalingam :—

(a) Appointment of Messrs Nathan Publications, the partners of which were and are the benefactors of Shri Anbil Dharmalingam for the past twenty-five years, as Agent for Government Text Books.

In response to the notices/notification, statements/affidavits from 27 persons were received. Apart from the affidavits filed by the Memorialists and the Respondents, five more affidavits were filed by persons who were likely to be prejudicially affected by the Inquiry, Shri Anbil Dharmalingam filed a counter-affidavit in which he denied the allegations. Subsequently, Shri V. R. Nedunchezian former Minister of Education in the Ministry of Shri M. Karunanidhi, Respondent, in response to a notice issued by the Commission, filed his counter-affidavit in which he disowned responsibility for the alleged irregularities in the appointment of Nathan Publications as Distributors of Text Books in the year 1970.

The following 27 persons have submitted affidavits :—

1. V. Thangaraj, S/o Vadamalai, Kunoor, Lalgudi Circle, Lalgudi Co-operative Building Society, Tiruchirappalli District, Tamil Nadu.
2. A. R. Manickam, S/o Rathinasamy Nattar, Village Munsif, Jangamarajapuram, Lalgudi, Tiruchirappalli District, Tamil Nadu.
3. K. Soundararajan, S/o K. S. Krishnasamy Iyengar, Village Munsif, Keela Anbil (Village and Post), Tiruchirappalli District, Tamil Nadu.
4. C. Narayana Rao, First Income-Tax Officer, Salaries Circle-1, Madras-6.
5. R. Shanmugam, I.A.S., Managing Director, TANSI, 14, Whites Road, Madras-14.
6. G. Ramachandran, S/o Thiru N. R. Gopala Iyer, Accounts Officer, Tamil Nadu Text Books Society, Madras-31.
7. C. G. Rangabashyam, I.A.S., Secretary, Education Department, Government of Tamil Nadu, Fort St. George, Madras-9.
8. A. K. Sarangapani, Village Munsif, Mangammalpuram, Tiruchirappalli District, Tamil Nadu.
9. A. Natarajan Karnam, Mangammalpuram, Tiruchirappalli District, Tamil Nadu.

10. Radhakrishnan, Sub-Registrar, Lalgudi, Tiruchirappalli District, Tamil Nadu.
11. Murugesan, S/o Swetharanya Mudaliar, E.O., Town Panchayat, Lalgudi, Tiruchirappalli District, Tamil Nadu.
12. M. Mallingar, District Registrar, Tiruchirappalli.
13. L. R. Krishnamoorthy, S/o Rangasamy Iyer, Karnam, Abishegapuram, Lalgudi Taluk, Tiruchirappalli District, (Tamil Nadu).
14. M. A. Abbas, Sub-Registrar, Viralmalai, Pudukkottai District, (Tamil Nadu).
15. G. Muthusamy, S/o Ganapathy Pillai, Karnam, Kunnathur Village, Tiruchirappalli District, Tamil Nadu.
16. D. Subramanian, Income-Tax Officer-II, Tiruchirappalli-I.
17. R. Panchapakesan, Assistant Director of Inspection (Intelligence), Special Cell, Madras.
18. K. Vasudevan, S/o N. V. Krishnasamy Iyengar, Advocate, C-2, South 10-A, Cross, Thillainagar, Tiruchirappalli.
19. Vijayaraghavan, S/o S. Gopalakrishna Iyengar, E.O., Thayumanavar Devasthanam, Rock Fort, Tiruchirappalli.
20. L. S. Neelakandan, S/o L. K. Samba Parameswara Iyer, V. M., Lalgudi, Tiruchirappalli District, Tamil Nadu.
21. V. Ananthanarayanan, S/o Venkataramasubbayyar, Karnam, Mettupatti, -26, East Agraharam, Lalgudi, Tiruchirappalli District, Tamil Nadu.
22. Duraisamy Iyer, S/o Muthusamy Iyer, Keelanbil Village, Lalgudi Taluk, Tiruchirappalli District.
23. D. Ramachandran, S/o Duraisamy, Executive Officer, Sri Ranganathaswamy Devasthanam, Srirangam, Tiruchirappalli (T.N.).
24. Krishnamurthy, Income-Tax Officer, City Circle II (S), Tiruchirappalli (T.N.).
25. M. C. Balasubramanian, Income-Tax Officer, City Circle II (S), Tiruchirappalli (T.N.).
26. P. T. Pavithran, Income-Tax Officer, City Circle (2), Tiruchirappalli (T.N.).
27. S. N. Chokkalingam, Principal and Senior Professor, Muthurangam Government Arts College, Vellore. R/o Bharathi Dasan Nagar, Tollgate, Vellore.

The Investigating Officers whose services were utilised under Section 5-A, recorded statements of as many as 46 witnesses and submitted their report through Shri G. Ganesan, Superintendent of Police, who was in-charge of that investigating team. Notice of the receipt of the report was duly given to the Respondents, who then thoroughly inspected it and copied it out verbatim. The respondents were directed to say in their counter-affidavits what they had to say with regard to the correctness or otherwise of the record prepared by the investigating officers.

Instead of pleading to the same, they raised objections with regard to the admissibility of these reports. Those objections were rejected as per my detailed order, dated 11th September 1976, made in the presence of the Counsel for the interested persons. I had, *inter alia* summoned for oral examination Shri M. D. Paul, who was, at the material time, Managing Director of the Tamil Nadu Text Books Society. His evidence was recorded on 12th October 1976 after due notice to the Respondents, but the Respondents who had already decided not to participate in the proceedings of the Commission, did not avail of the opportunity to cross-examine him.

I am satisfied from the affidavits of the above mentioned 27 persons that in the investigation report submitted under Section 5A, the statements of the witnesses have been correctly and faithfully recorded, by the investigators.

In the counter-affidavit, Shri Anbil Dharmalingam while denying this Allegation in toto, has said that he had given a full reply, dated 14th December 1972, in the reply to the Prime Minister. This reply is published on page 127 of the Book. Therein Anbil Dharmalingam while denying that he was living with Kasthuri Chettiar and Pandurangam Chettiar, said that he had known Pandurangam and Kasthuri Chettiar and there had been no other connection with them.

The points which require consideration are :—

(1) Whether Shri Anbil Dharmalingam had intimate relations with Kasthuri Chettiar and his brother, Pandurangam Chettiar, and whether they had joint business interests?

(2) Whether before the D.M.K. came into power in 1967, the group of M/s. Anbil Dharmalingam, Kasthuri Chettiar and Pandurangam Chettiar were not affluent and whether subsequently they became so?

(3) Whether there were any irregularities, improprieties or illegalities in the appointment of Nathan Publications as Distributors of text books and, if so, who was responsible for the same?

Was the appointment of Nathan Publications an act of favouritism to benefit Shri Anbil Dharmalingam and the partners of that firm, including the Pandurangam brothers, who were members of the ruling political Party ?

With regard to the first point, A. R. Manickam, Village Munsif of Jangamarajapuram, in his affidavit has deposed that Anbil Dharmalingam was a native of Jangamarajapuram which, along with two other hamlets, Mangammalpuram and Keezh Anbil, was known by a compendious name, Anbil, in Lalgudi Taluk of Tiruchirappalli District. The mother of Kasthuri Chettiar was also born in Anbil Village. Shri K. Sundararajan, who is the Village Munsif of Keezh Anbil, has also deposed that Kasthuri Chettiar and Anbil Dharmalingam were very close family friends. Manickam and Sundararajan have stated that a room in the Nathan Press building belonging to Kasthuri Chettiar and his brother always used to be reserved for Anbil Dharmalingam whenever he stayed in Tiruchirappalli. Shri S. A. Natarajan, who knew Anbil right from his school days and whose statement has been recorded by the Investigating Officer under Section 5-A, has also borne out these facts. He has further deposed that Pandurangam Chettiar and Anbil are of the same age group and are friends from their very childhood. Initially, both Anbil and Pandurangam Chettiar were followers of E.V.R. in Dravida Kazhagam, but later become active members of D.M.K. in Tiruchirappalli District. Anbil generally used to stay in the first floor of Nathan Press, opposite to Raja Talkies, and it was only occasionally that he used to visit Lalgudi and Anbil Village. Natarajan had met Anbil on several occasions while he was staying at Nathan Press.

It may incidentally be mentioned that Rajagopal, CW-1, examined by the Commission in connection with Allegation No. 11(b) (Aerial Spraying) has also testified to the fact of Anbil's stay in the Nathan Press in February 1970 and in the third week of May, 1970.

Apart from oral evidence, there is ample documentary evidence to establish that Anbil was generally staying in the building known as Nathan Press at Tiruchirappalli. Anbil had applied for a House Building Loan from the Lalgudi Co-operative House Building Society. In his letter, dated 11th May 1968, as well as in a declaration, dated 28th January 1971, sent to the Society, he had himself given his address as 77, Madurai Road, Tiruchirappalli which is the address of Nathan and Co. The letter, dated 18th May 1968, 20th June 1968 and 23rd November 1968, written by the Secretary of the Society to Anbil were also addressed to 77, Madurai Road, Tiruchirappalli. Shri Periasamy Odayar, Secretary of the Society, in his statement recorded under S. 5-A has stated that the address given by Anbil in all his correspondence with the Society was 77, Madurai Road, Tiruchirappalli-8. Shri V. Thangaraj, who was working as a Clerk in the said Society, has also confirmed this in his affidavit. There is thus, conclusive evidence—both oral and documentary—of the fact that at the relevant time, Anbil was mostly residing in the Nathan Press at Tiruchirappalli, owned by Pandurangam and Kasthuri Chettiar.

The material collected by the Investigation Agency appointed under Sec. 5-A of the Act shows that Anbil and the Pandurangam brothers have joint interests in a number of concerns. Shri R. Panchapagesan, Assistant Director of Inspection (Intelligence), Special Cell, Madras, in his statement under Sec. 5-A, dated 30th July 1976, as well as in his affidavit, dated 8th October 1976, has deposed that he had scrutinised the ledgers of Nathan Publications for the periods ending 31st March 1971 and 31st March 1972 and detected that there was an account of the D.M.K. Building Committee for the purpose of construction of the D.M.K. Party Office at Tiruchirappalli. Nathan Publications received an amount of Rs. 78,000 in cash on various dates towards this building Account. Out of this, during the year ending 31st March 1972, a sum of Rs. 35,000 had been diverted to M/s. Kunnathur Farm. This amount was made up of Rs. 10,000 paid on 31st May 1971 by cash, Rs. 10,000 paid on 8th June 1971 by cheque and Rs. 15,000 on 20th July 1971 by cheque. Shri Panchapagesan has further deposed that the sons of Anbil Dharmalingam were interested as partners in the said Kunnathur Farm and the funds brought in the name of D.M.K. Building Committee in the books of Nathan Publications were assessed as the "unexplained income" of Nathan Publications. The seized accounts of Kunnathur Farm also showed that between 14th February 1972 and 28th March 1972, a total sum of Rs. 42,500 had been shown as loan given in the name of Poyyamozhi, minor son of Anbil. The two sons of Anbil have also shares in Cauvery Enterprises started by Pandurangam and his brother on 1st January 1972.

Shri C. Narayana Rao, Income-tax and Wealth Tax Officer, Madras, has testified that in a letter, dated 7th March 1974, received by him from Anbil Dharmalingam, Anbil had admitted that he had to pay Rs. 7,500 towards the cost of bricks to Thiru Kasthurirangan of Cauvery Brick Works. Anbil was a very close family friend of his. Both the Village Munsifs, A. R. Manickam and K. Sundararajan have confirmed that this Cauvery Brick Works in Anbil Village belongs to the same Kasthurirangan Chettiar of Nathan Press.

All the material facts involved with regard to the first point have, therefore, been very cogently proved.

With regard to the second point, the materials gathered by the Investigating Agency as well as the evidence received on affidavits by the Commission, reveal the following facts:—

Prior to his becoming a Minister on 15th March 1971, Shri Anbil Dharmalingam was not an income-tax assessee. He was an M.L.A. on the D.M.K. Party ticket from 1962 to 1967. He was Chairman of the Panchayat Union, Lalgudi, from 1967 to 1968. He was also the District Secretary of the D.M.K. party in Tiruchirappalli from 1954 till he became a Minister in March 1971. Thus, apart from being an active member of the D.M.K. Party and taking active part in all the agitations and political programmes sponsored by that Party, Anbil Dharmalingam had no other avocation in life. From the affidavits filed by A. R. Manickam, Village Munsif, Jangamarajapuram, K. Sundararajan, Village Munsif, Keezh Anbil, A. K. Sarangapani, Village Munsif of Mangammalpuram and A. Natarajan, Karnam of Jangamarajapuram and Mangammalpuram, it is evident that prior to 1967, Anbil Dharmalingam, his brother, Ponnurama Nattar, and his sister, Dhanamanickam, had only the following properties :—

- (1) Two old houses at Jangamarajapuram ;
- (2) Fifty-three cents of Nanja land;
- (3) Eight acres of wet land (leasehold) at village Anbil.

The Investigating Officers have also examined the following witnesses, who are either officials or residents of the concerned villages and are, therefore, competent to depose about the properties subsequently acquired by Anbil Dharmalingam, either in his own name or in the names of his family members :—

1. Shri Periasamy Odaiyar, Honorary Secretary, Co-operative House Building Society, Lalgudi.
2. A. K. Sarangapani, Village Munsif, Mangammalpuram.
3. A. Natarajan, Karnam of Jangamarajapuram.
4. A. R. Manickam, Village Munsif, Jangamarajapuram.
5. Radhakrishnan, Sub-Registrar, Lalgudi.
6. S. Murugesan, Executive Officer, Town Panchayat, Lalgudi.
7. M. Mallingar, District Registrar, Tiruchirappalli.
8. L.R. Krishnamurthi Iyer, Karnam, Abhishegapuram, Lalgudi.
9. M.A. Abbas, Sub-Registrar, Viralimalai.
10. G. Muthuswamy, of Kunnathur.
11. D. Subramaniam, Income-tax Officer, Tiruchirappalli.
12. L. Srinivasa Iyer, Karnam, Pulimathur.

All these persons except, Shri Periasamy Odaiyar, have also filed affidavits in support of the statements that they had made earlier before the Investigating Officers.

The Investigating Agency has also produced either the original or certified copies of the following documents which have been referred to by these witnesses :—

1. Loan application file of Anbil Dharmalingam obtained from Lalgudi Co-operative Building Society.
2. Copies of registered documents (1967 to 1976) obtained from the Office of Sub-Registrar Lalgudi, on 26th June 1976 executed by Anbil Dharmalingam, his wife, Thanga Ponnammal, Kasturirangan in the name of Cauveri Brick Works, Dhanamanickam (younger sister of Anbil Dharmalingam), Ponnurama Nattar (younger brother of Anbil Dharmalingam) Periasamy (husband of Dhanamanickam), Poyyamozhi (son of Anbil) and Santhanavalli (concubine of Anbil).
3. Extract of documents entered at District Registrar's Office at Trichy, dated 26th June 1976, regarding landed properties of Anbil Dharmalingam, Muhil Kumar (son of Pandurangam) Poyyamozhi and Usha Rani (daughter of Santhanavalli)—also extract of Partnership Deeds of Nathan Publications, dated 2nd February 1968 and 15th October 1975.
4. Extract dated 6th July 1976 from, documents registered by Sub-Registrar, Viralimalai Pudukottai district in respect of Kunnathur Farm.
5. Extract of Adangal register issued by Karnam of Kunnathur giving details of Survey Nos. etc., of Kunnathur Farm.
6. Copy of Partnership Deed, dated 1st January 1972, of Cauveri Enterprises, started by Pandurangam and his brother, in which Poyyamozhi and Periasamy, sons of Anbil Dharmalingam are partners.

7. Extract of Adangal register of Karnam of Pulimathur, Nadukkaveri P.S. Thanjavur Taluk, regarding the landed property of Krishnaswamy Sholanga Thevar and his wife (father-in-law and mother-in-law of Poyyamozhi).

8. Report collected from Income-tax Officer, Trichy, containing particulars regarding income-tax assessment of Dhanamanickam, Poyyamozhi, Pandurangan, Lakshmibai (wife of Pandurangan), Usha Devi (daughter of Pandurangan), Kalanidi (daughter of Pandurangan), Kasturirangan, Savita Devi (wife of Kasturirangan) and Rajarathnam (brother of Kasturi and Pandurangan).

From the oral and documentary evidence referred to above, it appears that after the D.M.K. came to power in 1967, the following properties have been acquired by Anbil Dharmalingam in his own name :—

1. 2.16 acres of land worth Rs. 10,700 in Mangammalpuram Village, purchased on 5th January 1970.
2. A house worth Rs. 75,000 at Paramasivapuram in Lalgudi, constructed in 1968 over plot No. C-47 measuring 3,600 square feet purchased on 4th May 1968 for Rs. 1,479.83.
- 3(a) Ambassador Car No. MDY 9595 purchased on 31st August 1968 and sold on 5th August 1971.
- (b) Ambassador Car No. TNY 999 on hire purchase endorsed by the Bank of India, Tiruchirappalli on 30th June 1971, and sold on 12th September 1972.
- (c) Fiat Car No. TNY 3334 purchased on 4th January 1973.
- 4(a) Fixed Deposit of Rs. 1,000 in the Bank of India.
- (b) Fixed Deposit of Rs. 2,000 in State Bank of India, Lalgudi.
- (c) Fixed Deposit of Rs. 20,000 in District Central Bank, Tiruchirappalli.
- (d) Jewels worth less than Rs. 10,000.

Shri Anbil Dharmalingam has also acquired the following properties in the names of his family members :—

1. Two acres and 17 cents of Punja land in Mangammalpuram Village, worth Rs. 10,850 purchased on 15th July 1973 in the name of his wife, Thanga Ponnammal.
2. House site (Plot No. 23) at Abhishegapuram, Lalgudi, to the extent of 40 feet into 70 feet, worth Rs. 2,240, purchased on 17th February 1971 in the name of his son, Poyyamozhi.
3. A house worth Rs. 80,000 (extent 11420 square feet) purchased in 1975 by his son Poyyamozhi at Abishegapuram Village of Trichirappalli Taluk.
4. Shares worth Rs. 10,000 (Rs. 5,000 each in the name of his sons, Poyyamozhi and Rajendran) acquired in 1970 as partners in Kunnathur Farm, in Kunnathur village, Kulathur taluk, Pudukkottai district.
5. Shares worth Rs. 30,000 (Rs. 15,000 in the name of each of his sons, Poyyamozhi and Periasamy), acquired in Cauveri Enterprises in 1972.

In the assets declared by Anbil himself for the years ending 31st March 1971 and 31st March 1972, he has admitted having acquired certain properties in the name of his wife and in the names of his sons. Apart from this, there is practically no evidence to show that the wife or sons of Anbil Dharmalingam had any independent source of income from which they could have acquired these assets. None of them is an income-tax assessee. Even in respect of Poyyamozhi, the Income-tax Department have just opened a file to assess his income particulars. It can, therefore, be presumed reasonably that all these properties were acquired by Anbil Dharmalingam either in the name of his wife or in the names of his sons.

The evidence collected by the Investigating Officer has also revealed that Anbil's close relatives his sister, Dhanamanickam, his brother-in-law, Periaswamy, and the minor children of his younger brother, Ponnurama Nattar, have also acquired the following properties subsequent to 1967:—

1. 2.86 acres of Nanja land worth Rs. 29,680 in Mangammalpuram Village purchased in three lots on 6th April 1972, 3rd May 1972 and 10th November 1974 by Smt. Dhanamanickam. (Her husband, Periasamy, is a Government servant and has not declared these properties in his annual statement which he is required to give under the Government Servants' Conduct Rules.)

2. House worth Rs. 60,000, constructed at Anbil village in 1975 by Smt. Dhanamanickam (This has also not been declared by her husband, Periasamy).

3. Partnership rights in Nathan Publications acquired in 1968 by Dhanamanickam (not declared by her husband).

4. 0.12 cents of Punja land worth Rs. 600 purchased on 15th September 1969 at Mangammalpuram village, an old house worth Rs. 300 purchased on 28th June 1968 in Jangamarajapuram and 1.10 acres of land in Sirumathur village, accepted in mortgage for Rs. 3,000 on 12th December 1968—all in the name of Periasamy, who has not declared these properties as contemplated by Rule 7 of the Tamil Nadu Government Servants, Conduct Rules.

5. 2.83 acres Punja land, worth Rs. 14,150 acquired on 15th July 1973, in the names of minor children of Ponnurama Nattar (brother of Anbil).

Anbil's sister, Smt. Dhanamanickam, was assessed to income-tax as follows :—

1971-72	..	Rs. 360 (paid).
1972-73	..	Rs. 2,337 (not paid).
1973-74	..	Rs. 1,114 (paid).

Assessments for subsequent years have not yet been completed. All other members of Anbil's family are not income-tax assesseees.

Smt. Santhanavalli, said to be concubine of Anbil Dharmalingam, has acquired a housesite at Abhishegapuram in Lalgudi, worth Rs. 1,920, on 26th May 1971. Over this plot she has constructed a house, worth Rs. 70,000 in 1975. In the name of her daughter, Usha Rani, a housesite 52 feet into 90 feet has been acquired at Sunder Nagar in 1975, for Rs. 4,680. The Investigating Officers have collected evidence which raises a reasonable suspicion that these properties have also been acquired by Anbil Dharmalingam either in the name of Santhanavalli or in the name of her daughter.

Shri K. Vasudevan, an advocate of Trichy who was keeping Santhanavalli before she became Anbil's concubine, has deposed that he did not give her any immovable property. During the years 1955 to 1971, he had spent some amount on her maintenance and also purchased jewellery not exceeding 20 sovereigns.

The Executive Officer of Thayumanaswamy Dewaswom, Rock Fort, Trichy, Shri Vijayaraghavan, has deposed that Smt. Santhanavalli lives in house No. 111/1, Vanappattarai Street, Teppakulam North, Trichy which belongs to the Dewaswom. The house has been rented out to Anbil Dharmalingam and every year he has been renewing the rent lease. Rent receipts are also being issued in the name of Shri Anbil Dharmalingam. When Smt. Santhanavalli's new house was constructed in 1975, there was a ceremony and the invitation card issued by her also bore the endorsement of Anbil Dharmalingam.

Shri L.S. Neelakantan, the Village Headman of Lalgudi village, has deposed that Shri Anbil Dharmalingam was present on that occasion. The registration of the vacant sites at Abhishegapuram village acquired by Poyyamozhi and Usha Rani, daughter of Smt. Santhanavalli, was done on the same date.

With regard to Kasthuri Chettiar and Pandurangam Chettiar, the evidence on record discloses the following picture :—

Kasturi, Pandurangam, Rajaratnam and Jagannathan are the four sons of the late Balakrishna Chettiar, who was a native of Thuvareankuruchi village but married in Anbil village. Pandurangam and his brothers were not in affluent circumstances, originally. Their matrimonial alliances were also with families of moderate means. Pandurangam settled at Trichy about 25 years ago and started life as a book-binder. He also started a petty business in synthetic diamonds styled as 'Usha Diamonds'. In 1952 he started Nathan Press in the name of his younger brother, Rajaratnam. The business of this Press was to make blocks for calendars to be printed in other Presses. From 7th July 1955, Nathan and Co. were registered as Printers in the Office of the Collector, Trichy and started printing themselves.

Prior to 1967, Pandurangam and his brothers were in possession of 3 acres and 67 cents only of Punja land an old house and a small rice-mill in Thuvareankurichi. In 1962, they started a small-scale concern, named Cauveri Brick Works at Jangamarajapuram (Anbil village) with Kasturirangan, Rajaratnam and others as partners.

During and after 1967, Pandurangam and brothers have started the following new enterprises :—

1. Coleroon Agencies at Trichy in 1967.
2. Nathan Publications, 77 Madurai Road, Trichy-8, started in 1968 with Pandurangam, Smt. Dhanamanickam (sister of Anbil) and 5 others as partners
3. Nathan Finance Corporation at 73, Madurai Road, Trichy, started on 3rd March 1972.
4. Cauveri Enterprises, started in 1972 with 2 sons of Anbil as partners.
5. Kunnathur Farm, started in 1969 with 2 sons of Anbil as partners.
6. Nathan Press at Velacheri Road, Madras, with modern equipment, started in 1975.
7. Purchase of additional lands for Cauveri Brick Works at Anbil village.
8. Conversion of the old and small rice-mill at Thuvrankurichi into a big, modern rice-mill with a unit of oil-mill attached.
9. Jagannathan, younger brother of Pandurangam, has become a partner of Alagappa Theatre in his native village, Thuvrankurichi, and he is also constructing a big house there.
10. Pandurangam has purchased 2 tractors with trailers for Kunnathur Farm.

Prior to 1967—68, Pandurangam was a petty income-tax assessee. For the year 1950—51 he was assessed to a tax of Rs 123 only. In 1967-68, his assessment went up to Rs. 6,385 though in the year 1973-74, it had come down to Rs 4,972. His wife Lakshmibai, who paid only Rs.346 in 1967-68 as income-tax, paid Rs 2,309 in 1972-73. Rajaratnam, who in 1967-68 paid only Rs. 235 paid Rs. 7,207 in 1972-73 and Rs. 6,720 in 1973-74.

It is also significant to note that neither in the reply to the Prime Minister, printed at page 127 of the Book, nor in any of the counter-affidavits filed by Shri Anbil Dharmalingam, he has refuted the charge that he and his family members had become affluent after the advent of the D.M.K. to power.

He has also not taken the stand in any of his counter-affidavits that his relatives or his concubine, Smt Santhanavalli, had independent sources of their own income from which they could have acquired the various properties standing in their names. Pandurangam Chettiar, however, in his affidavit, has claimed that came from a well-to-do family and was affluent even from before, but this claim is not supported by the evidence on record.

Thus, from the evidence which has been mainly gathered from authentic income-tax records, registered documents and from the evidence of Income-tax officials, officials of the Registration Department, Village Headmen and so on, it is abundantly clear that Shri Anbil Dharmalingam and his family members and the Pandurangam brothers (partners of Nathan Publications), were not affluent prior to 1967 and there was a spurt in their affluence and prosperity after the D.M.K. came to power in 1967.

The *third* point is actually the gravamen of the charge contained in Allegation No. 11(a).

In 1960, the then State Government decided to nationalise publication of text books. Distribution was, however, done through a few reputed and selected registered publishers.

After the D.M.K. came to power, a new firm known as Nathan Publications was registered on 2nd February 1968, at the same premises, i.e., 77, Madurai Road, Tiruchirappalli-8, where Nathan and Co., was in existence from 7th July 1955. The new firm had six partners, namely : Pandurangam, his brothers Rajaratnam and Kasturirangam, his nephew Srinivasan, Smt. Dhanamanickam (sister of Anbil Dharmalingam), M. S. Mani Akhilandam and Alagumuthu Sethulakshmi. Towards the end of 1968, Mani Akhilandam and Alagumuthu Sethulakshmi ceased to be partners, leaving the remaining four as partners.

On 23rd August 1968, the State Government issued G. O. No. 432 Education which laid down the guidelines to be followed in the matter of entrustment of distribution of nationalised text books from 1968-69 onwards. In 1970, the Tamil Nadu Text Book Society was formed, which was registered under the Societies Registration Act of 1860 on the 4th March 1970. The Memorandum of Association of the Society, states, among others, the following purposes for which the Society had been established :—

1. To acquire and take over the business and other activities of the Government of Tamil Nadu relating to publication of text books together with all its assets, rights, privileges and liabilities as the Government of Tamil Nadu may transfer to the Society and to carry on such business and activities and to exercise such powers, perform such duties and carry out such directions as may from time to time be given by the Government of Tamil Nadu and to promote the advancement of general and technical education.

2. To purchase or otherwise acquire, own, establish, either wholly or in part, and print publish, edit and sell all kinds of books and to stock, distribute and sell or enter into any arrangements for printing, publishing, stocking, distribution and sales of text books approved, sanctioned or assigned by the Government of Tamil Nadu and other competent authority, and any other publication which the Society may decide to publish.

Paragraph VII of the Memorandum of Association of the Society provided that the Government of Tamil Nadu may issue such directions to the Society as may be deemed necessary, consistent with the objects mentioned above.

The entire management of the affairs of the Society vested in a Board consisting of 11 members, of which the Chief Minister was the Chairman and the Minister for Education, the Vice-Chairman. The Memorandum of Association also contained rules which were to be followed in the management of the affairs of the Society. Under rule 40, an Executive Committee of the Society consisting of the Minister in-charge of Education (Chairman), Secretaries in-charge of Education and Finance and the Managing Director of the Society (Members), was to manage all the affairs and funds of the Society, subject to such policy decisions as may be laid down by the Board. Rule 41(f) specifically indicated the following as among the duties and powers of the Executive Committee :—

“To arrange to print, publish, stock, distribute and sell the publications of the Society.”

After the formation of the Tamil Nadu Text Books Society, the State Government issued orders in their G.O. No. 600, Education, dated 15th April 1970, permitting the Managing Director of the Society to follow the procedure indicated in the earlier G.O. No. 432, dated 28th March 1968 for distribution of books to be prescribed in schools during the year 1970-71. The material part of G.O. No. 432 was as follows :—

1. From the academic year 1968-69, the distribution of nationalised text books should be entrusted to one distributor in each Development District.
2. The sale of nationalised text books may be entrusted to registered publishers already registered with the Madras Text Books Committee, registered Co-operative Societies and Khadi Kraft Emporium, Madras (for Madras District) and selection may be made from among those who submit their tenders.
3. One distributor will be selected for each Development District and be made responsible for sale of books throughout that Development District.
4. No distributor should be entrusted with the distribution work of more than one Development District.
5. Priority in selection may be given to registered publishers, Co-operative Societies of the locality, who have the necessary facilities; and outsider may be given only in case there is no proper local response.
6. Sealed tenders may be called for by advertisement.
7. While selection is made, not only the rate of commission quoted for sale of books, but also their standing in the field and capacity to cope with the work speedily may be taken into consideration.
8. The Department is permitted to negotiate with tenderers, if necessary.
9. The Director of School Education is empowered to use his discretion to reject any tender without assigning any reason or to negotiate with any tenderer to avoid unhealthy competition.
10. The authorised distributor for each Development District should be required to furnish 10 per cent of the total cost of the books proposed to be supplied, towards cash security, and for the recurring cost, he may be required to furnish Bank guarantee or fidelity bonds.

The additional guidelines laid down in G.O. No. 600, dated 15th April 1970 were as follows :—

1. In addition to the standing, reputation, etc., of the District distributors, preference may be given to Income-tax assessee. Such of those registered publishers who have paid not less than Rs. 10,000 as tax during the past year may be selected. While inviting tenders, the tenderers may be asked to produce Income-tax Clearance Certificates also.

2. Retail dealers may be selected on the basis of the recommendation of the District Educational Officers concerned. Two or three of such dealers may be appointed for each Taluk. In addition, School Co-operative Societies may be allowed to purchase books from the District distributors on the same discount allowed to retail dealers of that district. Retailers may be asked to pay a licence fee of Rs. 25 per year and a licence renewal fee of Rs. 10 per year. School Co-operative Societies may be exempted in the payment of licence fee and security deposit.

3. Fresh tenders may be called for selection of District distributors for the year 1970-71, the Managing Director permitted to negotiate with the tenderers, if necessary, only if a particular tender is closed due to unfavourable tender rates, etc. He is also empowered to use his discretion to reject any tender without assigning any reason.

In accordance with G.O. No. 600, dated 15th April 1970, Shri M. D. Paul, Managing Director of the Society, called for tenders on 4th May 1970 from registered publishers and Co-operative Societies of the locality for being appointed as distributors of text books for the year 1970-71.

In response to the tender notice, 95 tenders were received, which were opened by Shri M. D. Paul and processed by him in his note, dated 21st May 1970 (Ex. CW. 10/4). There were in all 14 Revenue Districts in the State of Tamil Nadu. Four of these, namely Nilgiris, Dharmapuri, Madras and Kanyakumari were co-terminus with the Development Districts. In the remaining 10 Revenue Districts, 2 Development Districts were carved out of each Revenue District. There were thus, 24 Development Districts in all. Shri Paul based his proposal on the principle laid down in G.O. No. 600, namely of giving one publisher only one Development District. In the case of 16 Development Districts, he recommended selection of the lowest tenderers. With regard to the remaining Development Districts, he had suggested selection of a distributor other than the lowest tenderer. He had, however, given reasons against each in support of his recommendation for rejecting the lowest tender. Shri Paul's proposals in respect of these 8 Development Districts may be summarised in the following tabular form:—

<i>Sl. No.</i>	<i>Name of Development District.</i>	<i>Lowest Tender.</i>	<i>Tender Recommended.</i>	<i>Reasons for rejecting lowest Tender.</i>
(1)	(2)	(3)	(4)	(5)
1.	South Vellore ..	V. Manickam 8% ..	Radhakrishna Store 9.65%	The lowest tenderer, Shri V. Manickam, had been recommended for South Chingleput. The next higher tenderer, Bharathi Pathippagam, had defaulted in the payment of the entire dues to Government.
2.	South Cuddalore	Bharathi Pathippagam 8.4%.	Pari Nilayam 10% ..	For the reasons stated above against Serial No. 1, Bharathi Pathippagam was not selected. Pari Nilayam was only other tenderer.
3.	North Chingleput	V. Manickam 8.5% ..	Mangala Noolagam .. 9%	V. Manickam had already been selected for South Chingleput and Mangala Noolagam was the next higher tenderer. Book Centre, Coimbatore, had also offered 9%, but their main business is at Coimbatore and so, Mangala Noolagam, with facilities in Madras, was recommended.
4.	West Madurai ..	Dindigul Publishing House, Dindigul and V. Subramaniam and Co. (both 5.5%).	Dindigul Publishing House 5.25%	This distributor worked last year too and did satisfactory work and had also sent an unsolicited telegram offering 5.25%.
5.	North Tiruchirappalli.	Nathan 6%.	Palaniappa Bros. 5.5%	Nathan Publications are already being recommended for South Tiruchirappalli. Palaniappa Bros. have been distributors for North Tiruchirappalli during the last two years, and were willing to distribute at 5.5%.
6.	South Tirunelveli	Radhakrishna Pathippagam 6.5%.	S. R. Subramania Pillai 8.9%.	Radhakrishna Pathippagam has not been recommended for North Tirunelveli as S. R. Subramania Pillai has been distributing books for the last 10 years or so.
7.	North Salem ..	Vasan Pathippagam and Palaniappa Bros (both 5.9%).	Vasan Pathippagam 5.9%.	Palaniappa Bros. have already been recommended for North Tiruchirappalli.
8.	Nilgiris	Bharat Book Centre 7%.	Higginbothams 9.5%.	Bharat Book Centre has been recommended for West Coimbatore. Book Centre, Coimbatore have also offered 9.5 per cent but it is doubtful whether they have established business in the Nilgiris. Higginbothams have been distributing books for several years in Nilgiris and have done useful work.

For Madras District, the lowest tender was offered by Khadi Kraft, Madras (3.9 per cent). In his deposition, Shri Paul has said that a Distributor was expected to give 5 per cent commission to the retailer and any person offering a quotation of below 4 per cent could not obviously, be selected unless he proposed to do the distribution with out appointing retailers. In the case of Khadi Kraft, Shri Paul had contacted the Secretary, who made him understand that they had ten retail centres in various centres in the city and would be able to sell through these. He was also assured that wherever necessary, Khadi Kraft could open a few new depots.

In his analysis of the proposals as mentioned above, Shri Paul did keep in view broadly, the following principles laid down in G.Os. 432 and 600.

1. Not more than one distributor for one Development District.
2. Lowest tenderer who would be able to maintain out of the commission admissible to him. another retail Taluk distributor, which means that his quotation should not less than 5 per cent.
3. Registered publisher.
4. A tenderer who undertakes to keep a Taluk centre of his own and can consequently manage with less than 5 per cent commission, should be considered even if his tender is below 5 per cent.
5. If the lowest tender is not recommended, reasons should be recorded therefor.
6. The tenderer should have given past satisfactory performance.

Shri Paul, however, did not follow the following guidelines laid down in the G.Os. in question :—

1. The amount of income-tax paid in the previous year or in the current year was not indicated, nor was it made clear in his note that he had satisfied himself about the financial soundness of the tenderers.
2. He did not check up the case of some of the tenderers about the previous experience and whether their performance in the past, if any; had been satisfactory.

With regard to the tenders of Nathan Publications, there were certain obvious defects, such as: (a) No Income-tax Clearance Certificate; (b) No Bank guarantee; (c) No evidence of previous experience was furnished, and (d) 'cuttings' in the tenders were not attested by the Managing Director immediately on their being opened.

Shri Paul, however, in his evidence has admitted that his not initialling the two "corrections" in the tenders of Nathan Publications immediately on their being opened, was an infraction of Rule 192 of the Madras Financial Code, but this was due to an accidental omission. In the absence of any evidence to show that Shri Paul was in any way interested in Nathan Publications, it may be presumed that these omissions were *bona fide* mistakes and the proposals contained in the note, dated 21st May 1970, of Shri Paul were substantially in conformity with the general guidelines laid down in G.Os. 432 and 600.

Shri Paul's note was addressed to the Executive Committee. According to his own deposition, he took the note personally to the then Secretary, Education, Shri S. Krishnaswamy, who after studying the note, minuted :

"I would like this to be discussed at a meeting of the Executive Committee". (Ex. CW 10/4E).

Shri Paul then took the file to the then Finance Secretary, Shri Venkataramanan, who minuted in the file :

"I have no objection to a decision on the above lines being taken by Secretary, Education, in consultation with Minister, Education and Health". (Ex. CW. 10/4F).

Shri Paul then wanted to take the note to the Minister for Education Shri V. R. Nedunchezhiyan, who was also the Chairman of the Executive Committee of the Text Books Society. The Minister at that time had gone on camp to Ooty. Shri Paul was in a hurry to issue orders before the end of the month, because the text books had to be sent to the various parts of the State by the beginning of June, when the schools re-opened. He, therefore, deputed the Special Officer for Text Books, Shri Chockalingam to go to Ooty, explain the urgency of the matter to Shri Nedunchezhiyan, obtain his orders and bring back the file. On the 22nd May, Shri Chockalingam left for Ooty.

On the 25th morning he came back and reported to Shri Paul that the Minister had not accepted his proposals and wanted Shri Paul to discuss the matter with him on his return to the headquarters. These orders of the Minister conveyed to Shri Chockalingam were verbal and so, Shri Chockalingam also reported to Shri Paul, verbally. The file, however, was not brought back by Shri Chockalingam, who said that it had been retained by the Minister. Shri Chockalingam has filed an affidavit in which he has confirmed his going to Ooty at the instance of Shri Paul and what subsequently followed. His T. A. bill. (Ex CW-10/8) which shows the purpose of his journey as "To meet the Education Minister at Ooty in connection with the appointment of distributors" is conclusive proof of his journey to Ooty and back.

On Shri Nedunchezhiyan's return to the headquarters, Shri Paul met him in the Secretariat on the morning of the 27th or 28th May, 1970. He had taken with him the office copy of his note dated 21st May 1970, which had been sent earlier to the Minister in the file. The Minister confirmed that he had not approved the earlier proposal of Shri Paul. A discussion followed, during which Shri Paul brought to the notice of the Minister, the principle that one publisher should be given only one Development District, except where there are extraordinary reasons. After this discussion, the Minister indicated that for Tiruchirappalli North, Nathan Publications, who had quoted 6 per cent should be preferred over Palaniappa Brothers, who were willing to distribute at a commission of 5.5 per cent. The Minister also decided to prefer Star Publications, who had quoted 8 per cent, over Shri Manickam, who had quoted 7 per cent and who had been recommended for South Chingleput in Shri Paul's note, dated 21st May 1970. After this discussion, the Minister directed Shri Paul to put up a revised proposal on the lines of his decision, orally conveyed to Shri Paul during the discussion. Accordingly, Shri Paul went to the office, and in a few cases where negotiations were necessary, held negotiations with those concerned, and then put up a revised note on 28th May 1970.

In the revised note (Ex. CW-10/9), dated 28th May 1970, put up by Shri Paul, the following lowest tenderers earlier recommended by him had been deleted and instead, higher tenderers had been selected :—

Serial number. (1)	District (2)	Tender originally recommended. (3)	Tender finally recommended and approved. (4)
1.	South Chingleput	V. Manickam & Co. 7%	Star Publications, Madras. 8%
2.	West Coimbatore	Bharat Book Centre 5%	Asian Book Co., Madras. 5.8%
3.	East Madurai	Rajan & Co. 4%	E.S. Radhakrishnan & Sons. 5.8%
4.	North Trichy	Palaniappa Bros. 5.5%	Nathan Publications 6%
5.	Madras	Khadi Craft 3.9%	Palaniappa Bros. 5.4%

In his deposition before the Commission, Shri Paul has stated that in the case of North Tiruchirappalli and South Chingleput Districts, the changes in the original proposals made by him, were made at the instance of the Minister. In his statement before the Investigating Officer under Section 5-A, however, he has clarified that in all these five cases, the changes in his original proposal were based on the decision of the Chairman of the Executive Committee verbally indicated to him during the discussion. In the case of Nathan Publications, the revised proposal to give them North Tiruchirappalli District in addition to South Tiruchirappalli, was a distinct violation of the principle of one Distributor for one Development District. There were no extra ordinary reasons for deviating from this principle in the case of Nathan Publications *alone*. Questioned above the justification for this change, Shri Paul replied :

"There was no option for me but to carry out the instructions of the Minister and draft this revised note accordingly, although my personal opinion was different as earlier put down in my note, dated 21st May 1970, (Ex.CW-10/4), because my earlier proposals were based on some principles, while the revised note was put up according to the will of the Minister."

With this revised note (Ex.CW-10/9), Shri Paul took the file personally to the Minister who went through it and immediately signed it on the same date in token of approval. Shri Paul then took the file on the following day to Shri Venkataramanan, Secretary, Finance, who signed it on 29th May 1970. Thereafter, he went to the Education Secretary, who was not in his office. In view of the urgency, he issued orders on the same day appointing Distributors in accordance with the revised proposal, as approved by the Minister, and subsequently on 16th June 1970 obtained *ex post facto* approval of the Secretary, Education, also, on his revised note, dated 28th May 1970.

There are two strong circumstances which support Shri Paul's contention that the revised proposals were put up by him as ordered by the Minister : The *first* is that his revised note starts with this preamble :

"After discussion with the Chairman of the Executive Committee and after negotiations with those concerned, the following revised proposals are submitted to the Executive Committee for approval."

If Shri Paul was putting up these revised proposals on his own, the Minister while approving the revised note, could certainly have taken objection to this preamble. He obviously, did not do so, nor has he offered any explanation to this in his counter-affidavit. The *second* circumstance is that ordinarily, the order of circulation of files containing proposals for consideration by the Executive Committee, was that it was to be taken first to the Secretary, Education, thereafter to the Secretary, Finance, and finally to the Chairman, i.e., Minister, Education. In this particular case, the process was reversed. Shri Paul has explained this in these words :—

"With very great difficulty even this approval could be got to issue orders before the end of May. Otherwise, lakhs of students would have suffered for want of text books. The Government as well as the Society would have come to disrepute. Consequently, I had no option but to abridge the usual formalities of the procedure."

The appointment of Nathan Publications as Distributors for the year 1970-71 for both Tiruchirappalli North and Tiruchirappalli South Development Districts, involved these material irregularities :—

(1) They were not the lowest tenderers for Tiruchirappalli North. In the revised proposals, no reason was given for preferring them over Palaniappa Brothers who had quoted 5.5 per cent as against Nathan Publications' 6 per cent and had also done satisfactory work during the previous two years as Distributors for Tiruchirappalli North District.

(2) Without any adequate reasons, the principle laid down in G.Os. 432 and 600 of appointing one Distributor for one Development District, only, was not followed while appointing them as Distributors for two Development Districts.

(3) Although they were registered publishers, Nathan Publications had no previous experience of working as Distributors.

(4) No attempt was made to verify whether Nathan Publications had paid Income-tax to the tune of Rs. 10,000 in the previous year, and no Income-tax Clearance Certificate or Bank guarantee was asked for.

(5) The normal procedure of taking a decision on such proposals after due discussion and deliberation, was departed from and the revised proposals were directly put up to the Chairman and approved by him on the same day and thus confronting the other two members of the Executive Committee with a *fait accompli*.

(6) The 'corrections' found in the tenders originally filed by Nathan Publications, were not attested by the authority opening the tender, and in accordance with article 192(4) of the Madras Financial Code (Vol. I), such tenders should have been rejected straightaway.

The Minister, Shri Nedunchezhiyan, was directly responsible for Irregularities 1, 2 and 5. Shri Paul was responsible for Irregularities 3, 4 and 6. Shri Nedunchezhiyan has not denied even in his counter-affidavit, the existence of the irregularities in the matter of appointment of Distributors for text books in the year 1970-71. He, however, blames Shri Paul, Managing Director, for them all. Although the primary responsibility for some of these irregularities was that of Shri Paul, there is no evidence on the record—direct or inferential—to suggest that he had committed these irregularities at the instance of the Education Minister or that he was in any way interested in favouring Nathan Publications. In his case therefore, the irregularities seem to be *bona fide* mistakes. The irregularities attributed to Shri Nedunchezhiyan are of a more substantive character, and, considered collectively in the light of the surrounding circumstances of the case, lead to the conclusion that they have been committed to favour Nathan Publications.

From the figures collected by the Investigating Officers, it appears that Nathan Publications earned a sum of Rs. 34,602.67 as commission from these two Development Districts during the year 1970-71. The total loss to the Text Book Society in the shape of higher commission than

what would have been admissible to Palaniappa brothers, comes to Rs. 1,541.05. These figures by themselves, are not very substantial. But the increasingly large volume of business entrusted to Nathan Publications in the following years are very revealing :—

Year.	Percentage of commission.	Total commission allowed.
(1)	(2)	(3)
		Rs. P.
1970—71	6	18,496.55
	7	16,106.12
1971—72	6	24,781.89
	7	20,364.58
1972—73	10	1,80,821.32
1973—74	10	1,18,084.90
1974—75	10	1,39,817.11
1975—76	12	1,82,716.08
(up to 31—1—76)		
Total ..		7,01,188.55

During the year 1971-72, the Executive Committee took a decision that the Distributors of 1970-71 should be continued for 1971-72 at the same rate of commission. Again, in 1972-73, a decision was taken that instead of Distributors for each Development District, Distributors would be selected for each Taluk at a uniform rate of commission at 10%. Although the then Education Secretary, Shri Diraviam, in his statement before the Investigating Officer, and Shri Nedunchezhiyan in his counter-affidavit have expressed the view that the Executive Committee was fully competent to take these decisions and since the approval of the Chief Minister was also taken, there was no need to refer the matter either to the Board or to Government, it is difficult to accept this view. The Society's Memorandum of Association and the Rules make it clear that although the Society would be, to a large extent, autonomous in its functioning, it may not, on its own, supersede the directives laid down in Government Orders 432 and 600, and other such instructions issued from time to time by the Government. Although there is no evidence that these policy decisions were taken only to favour Nathan Publications, yet as a result of these decisions, Nathan Publications got substantial volume of business almost every year, as long as the D.M.K. remained in power. It is also clear that the Text Book Society had given a go-by to the system of tenders and had adopted the practice of selecting Distributors in a somewhat arbitrary manner. The revised system may be briefly described, in the words of Shri Shanmugam, who succeeded Shri Paul, as Managing Director :

"After observing the usual formalities, discussions were held in the Education Minister's room with the Members and Chairman of the Executive Committee and the list of bulk distributors was finalised and the approval of the Executive Committee was obtained."

Shri Diraviam, also, in his statement under Section 5-A stated:

"During the discussions in which I had participated, only the general question of policy and patterns were discussed. Individual cases of distributors to be selected were not discussed. This was left to the Managing Director, who as a rule, informally discussed with the Minister for Education and in some cases, with the Chief Minister also, and as long as the guidelines for selections were followed, the selections were approved by the other members of the Executive Committee, namely Secretary, Education and Secretary, Finance."

From these statements it appears that the method adopted by Shri Nedunchezhiyan in getting a revised note from Shri Paul according to his wishes became the general pattern in the following years, and this was probably the reason for significant spurt in the volume of business handled by Nathan Publications in the subsequent years. Shri Shanmugam in his affidavit(AW5) has said that in the year 1972-73, 8 Taluks out of 10 Taluks in Trichi North and South Development Districts were given to Nathan Publications and 7 Taluks in 1973-74, which was the highest coverage to one publisher in these years in the entire State. The purpose of changing the earlier Policy of having one Distributor for one Development District, to one for each Taluk, which according to Shri Nedunchezhiyan was 'decentralisation and better distribution', appears to have been defeated by this decision of allotting practically an entire Revenue District (two Development Districts) to a single Distributor.

There is unimpeachable evidence on record to show that Pandurangam and Kasthuri Chettiyar, partners of Nathan Publications, were staunch members of the D.M.K. Party. Shri Anbil Dharmalingam's sister, Shrimathi Dhanamanickam, was also a partner in this concern. The conclusion is, therefore, inescapable that the appointment of Nathan Publications as Distributors for two Development Districts during 1970-71 in violation of the rules and the norms of propriety, was made clearly with the motive to favour either the members or supporters of the ruling Party in the State.

Chapter III.

ALLEGATION 11 (b)—“AERIAL SPRAYING”

Against

SHRI ANBIL DHARMALINGAM and SHRI M. KARUNANIDHI.

This allegation as extracted from the memoranda of Sarvashri M. G. Ramachandran and M. Kalyanasundaram at Serial No. 11(b) of the Annexure to the said Notification, runs as under :

“Memorandum of Shri M. G. Ramachandran :

x x x x x x x

(b) A sum of Rs. 4.5 lakhs has been seized from Ponni Enterprises on 23rd October 1972. Thiru S. A. Muruganandam, M.P., has published in the Press statements exposing the corruption of the Ministers. Booklets have been printed and issued to the public.

Thiru Anbil Dharmalingam is the Minister for Agriculture and highly startling facts have come to the knowledge of public about his close activities in granting aerial spraying contracts to the Indian Agricultural Aviation Association, Bombay, through Anbil Dharmalingam's shadow and benami—Ponni Enterprises. The extent of lands subjected to spraying were :

<i>Year.</i>				<i>Area covered (in lakhs of acres.)</i>	<i>Expenditure incurred.</i>
(1)				(2)	(3)
					RS.
1968-69	..	..	..	2.870	50.77 lakhs.
1969-70	..	..	..	1.860	28.775 lakhs.
1970-71	..	..	..	6.974	Correct figure to be ascertained.
1971-72	..	..	..	9.804	103.857 lakhs.

Rate of spraying charges for wing aircraft and helicopter were as under :

<i>Year.</i>				<i>Aircraft.</i>	<i>Helicopter.</i>
(1)				(2)	(3)
				RS.	RS.
1968-69	..	..	..	8 per acre.	10 per acre.
1969-70	..	..	..		5.98 per acre.
1970-71	..	..	..	7 per acre.	9 per acre.
1971-72	..	..	..	8 per acre.	11 per acre.

“The concern Ponni Enterprises is said to be a shadow of Thiru Anbil Dharmalingam, consisting of partners :

1. Rajagopal.
2. Babu
3. N. Jayaraman.

The three persons have no previous credit worthiness of business standing to negotiate terms with an Aviation Spraying Combine Group. When was this Ponni Enterprises formed ? How did they get the contract ? If an enquiry is instituted, it will clearly reveal that this same concern earned huge profits in account and also outside the account without capital. These persons have no standing to get one Tamilian to introduce them to Bank. They opened account in Indian Overseas Bank, Esplanade Branch where they have been introduced by Thiru Chandi Prasad Khemka residing at No. 9, Vth Street, Rutland Gate, Madras, who is incidentally Joint Managing Director of Khemka Co., and Director of Khemka Aviation Private Ltd., Delhi. This Aviation Company is also a Member of the Indian Agricultural Aviation Association who executed the contract for spraying in Tamil Nadu with M/s. Ponni Enterprises as their Agents. The Agent's powers and duties are to collect the spraying charges from Panchayat Union and District Agricultural Officers and forward them to the Bombay Aviation Association. The most important function of Ponni Enterprises is to make Panchayat Unions to pass resolutions for aerial spraying

This is done with the knowledge of the Chief Minister and Thiru Anbil Dharmalingam. It is the Government's duty to save the public money by calling for competitive tenders. It is their duty to ascertain from Panchayat Unions the extent of acreage to be sprayed and also the duty of the Government to collect money from Panchayat and pay it to Aviation Companies. The need for a middle man Ponni Enterprises is one of the *modus operandi* of the D.M.K. Government to collect commission from contractors in account and outside the account.

Ponni Enterprises has filed a suit before High Court of Madras for recovery of commission in respect of the commission due from Aviation Companies for spraying done in 1971-72. The suit is filed for recovery of commission of Rs. 3,99,440-80 paise on 4,99,300 acres. They have also obtained an attachment before judgment on 6th January 1972. The public are shocked to learn that Aviation Companies paid commission very promptly in all the previous years. The rift between the shadow and Aviation Company is *believed* due to a dispute about the unaccounted commission claimed from the Bombay Aviation Combine. This huge scandal has infuriated the peasants and agriculturists of Tamil Nadu. They have not forgotten the shootings and the terror unleashed against them during the Farmers' Agitation resisting against increase in power rate for agriculture. The peasants have risen in revolt during the past two weeks and they are demanding open enquiry against these scandals—misuse of office and the ministerial corruption."

"Memorandum of Shri M. Kalyanasundaram:

Mr. Anbil Dharmalingam.—The following charges are levelled against the Minister for Agriculture Mr. Anbil Dharmalingam.

X X X X X X X

"11(b). Mr. Anbil Dharmalingam has close connections with the partners of a firm called Ponni Enterprises. The said firm was appointed as Agents for Airline Companies engaged in aerial spray of chemicals and fertilisers over agricultural lands. Huge sums of money to the tune of several lakhs was earned by the said firm as commission from such Aerial Aviation Companies both in account and outside account in cash. On 23rd October 1972 a raid was conducted and a sum of Rs. 4.5 lakhs has been seized from the said firm. Mr. Anbil Dharmalingam's association with the partners of the said firm, the circumstances under which the said firm was appointed as Agents, the exact nature of services to pay huge sums as commission, the real consideration for such payment, whether the rate per acre of aerial spray was fixed by the Aviation Companies keeping the commission in view and if so the extent of loss to the public exchequer are all matters warranting serious investigation."

The story with full particulars revealed by the affidavits/statements, is as follows :—

In order to eradicate plant pests and diseases the Government of India sponsored a scheme for aerial spraying of crops with pesticides in endemic areas. For every acre of land sprayed pursuant to that scheme, the Government of India gave a subsidy not exceeding Rs. 7. The expenditure in excess of this subsidy had to be met by the State Government who could, if it considered necessary, recover that excess, in whole or in part, from the ryots/farmers whose crops were sprayed. Thus, the bulk of the expenditure incurred in implementing this scheme was borne by the Central Exchequer. If the aerial spraying was to be got done on contract basis, then those aircraft concerns only whose names were borne on the approved list maintained by the Director of Agriculture Aviation, Government of India, were eligible to get the contracts.

The State Government of Tamil Nadu availed of this beneficial scheme. For the year 1969-70, it gave contracts for aerial spraying of crops in the State, to four operators at negotiated rate of Rs. 5.98 per acre.

The practice adopted by the State Government in awarding such contracts was this: With the previous approval of the State Government, its Director of Agriculture used to invite tenders for aerial spraying work from approved Aviation Companies (hereinafter referred to as the Operators) through a published notice. The tenders were opened by the Director or Joint Director of Agriculture. The Director then submitted a report through the Secretary for Agriculture, to the State Government. In the Secretariat, the contracts were finalised with the approval of the Minister for Agriculture and the Chief Minister.

At the time of inviting tenders for 1970-71, Kumari Anna George was the Secretary, Agriculture. She continued in that post till Shri K. Diraviam succeeded her in June, 1970. Shri Diraviam then continued to hold that post till October 8, 1970 when he was succeeded by Shri P. N. Vedanarayanan. At all times material in 1970-71, Shri Hari Bhaskar was the Director of Agriculture, Shri M. Karunanidhi was the Chief Minister and Smt. Sathyavani Muthu was the Minister for Agriculture.

Shri Anbil Dharmalingam was the Secretary of the D.M.K. Party, Tiruchirappalli. On account of his position as a political boss of the ruling Party in the State, he wielded considerable influence not only on the Chief Minister, but also on Government Officers, including Shri Hari Bhaskar, who had between 1967 and 1969, served as Collector of Tiruchirappalli District.

Shri V. Rajagopal (C.W. 1), a P.W.D. contractor of Uppiliapuram in Tiruchirappalli District was a close friend of Shri Anbil Dharmalingam. Sometime in the beginning of 1970, Shri Rajagopal was introduced to Sarvashri Jayaraman and Desikan *alias* Babu.

In February 1970, Shri Jayaraman introduced Shri Rajagopal to Desikan's brother, Shri Seshadri, a Sales Representative of T. Stanes and Company who were Distributors of C.I.B.A. manufacturers. Later on, all the three met Shri A. N. Ramachandran another representative of C.I.B.A., in Ajanta Hotel, Tiruchirappalli. Sarvashri Seshadri and Ramachandran wanted Shri Rajagopal to procure through the influence of his friend, Shri Anbil Dharmalingam, orders for C.I.B.A. from the Government of Tamil Nadu for supply of pesticides.

Shri Rajagopal phoned to Shri Anbil Dharmalingam who immediately came to Ajanta Hotel, and, with Rajagopal on his side, assured Sarvashri Seshadri and A. N. Ramachandran that he would get orders on favourable terms for supply of pesticides by exercising his influence with the Government and the Officers concerned, provided C.I.B.A. paid commission. During that discussion, Seshadri and Ramachandran said that the aircraft Operators were making huge profits, and hinted that a lucrative commission could be procured from them. Shri Seshadri promised to introduce Rajagopal to those aircraft operators. Shri Anbil Dharmalingam at once caught the hint and directed Shri Rajagopal to pursue the matter with the Operators.

Four or five days later, Seshadri, Jayaraman, Desikan and one Viswanathan of Khemka Aviation (Private) Limited, came to Madras and met Rajagopal. Viswanathan told Rajagopal that tenders were going to be invited by the Tamil Nadu Government for aerial spraying during 1970-71 and that the Operators were desirous of securing contracts at favourable rates with the assistance of someone who had influence with the Government. Viswanathan sought Rajagopal's help as a contact-man for this purpose. Rajagopal informed him that he could commit himself only after consulting Shri Anbil Dharmalingam. He then reported his talk with Viswanathan to Shri Anbil Dharmalingam who promised to exercise his influence in favour of the Operators provided they paid commission in the region of 5 per cent. Rajagopal then conveyed the result of his talk with Shri Anbil Dharmalingam to Viswanathan who then introduced Rajagopal to Shri C. P. Khemka, Managing Director of Khemka Aviation (Private) Limited.

C. P. Khemka told Rajagopal that if he secured for the Operators, with the help of his friend, Shri Anbil Dharmalingam, economic rates higher than those of the previous year, 1969-70, he would be paid commission for that service. Rajagopal assured that he would discuss the matter further with him after consulting Shri Anbil Dharmalingam.

Rajagopal thereafter, met C. P. Khemka twice, on each occasion after seeking prior instructions and approval of Shri Anbil Dharmalingam with regard to every step to be taken in negotiating this arrangement for getting commission from the Operators.

Since Khemka could not commit himself on behalf of all the Operators who were members of the Indian Agricultural Aviation Association (hereinafter referred to as the Association) he introduced Rajagopal to Shri S. A. Ramachandran a local representative of Helicopter Services (Private) Limited whose Managing Director, Shri J. R. Modi was then President of the Association. After a discussion, Khemka and Ramachandran agreed to pay 40 paise per acre as commission in case Rajagopal and his friend, Shri Anbil Dharmalingam, procured for them aerial spraying contracts at the rate of Rs. 9 per acre. Before finally committing himself, Rajagopal again reported this proposal from the Operators to Shri Anbil Dharmalingam and sought his approval. Shri Anbil Dharmalingam agreed to this arrangement and promised to exercise his influence with the Government to secure the contracts for the Operators at the rate of Rs. 9 per acre provided all of them paid the commission at that rate. Rajagopal conveyed this to Khemka who promised to get the proposed arrangement accepted by all the members of the Association.

The Director of Agriculture, Madras on April 10, 1970 issued notice inviting from Operators on the approved list, tenders for aerial spraying during the year 1970-71. The last date for submission of tenders was 29th April 1970.

The tenders were opened by the Joint Director of Agriculture. The Association quoted for spraying from helicopters, a uniform rate of Rs. 9 per acre for its members, while Pushpaka Aviation (Private) Limited, who was then not a member of the Association quoted Rs. 8 per acre for an area of one lakh acres.

Soon after the opening of the tenders, C.P. Khemka contacted Rajagopal and asked him to commence his efforts through his friend, Shri Anbil Dharmalingam, for securing them contracts at the rate of Rs. 9 per acre. Rajagopal then met Shri Anbil Dharmalingam. The latter advised Rajagopal to form a Partnership, Ponnee Agencies, in the name of which Rajagopal and Shri Anbil Dharmalingam could receive the commission from the Operators, and share among themselves. Shri Anbil Dharmalingam impressed upon Rajagopal that his name as a partner should not be disclosed in the Partnership Agreement. Pursuant to these instructions, Rajagopal got prepared on May 7, 1970, a Partnership Agreement (Ex. C.W. 1/1) wherein Rajagopal, Mahalakshmi, Jayaraman and Desikan were shown as four partners, entitled to share the commission received from the Operators as follows :—

Rajagopal and Mahalakshmi	..	..	..	..	..	..	66 per cent.
Jayaraman and Desikan	..	..	..	..	..	..	17 per cent each.

Srimathi Mahalakshmi was introduced as “dummy” or a figure-head to cover and conceal the interest of Shri Anbil Dharmalingam who was the real, beneficial partner entitled to share equally, 66 per cent of the commission with Rajagopal.

Simultaneously with the preparation of the draft of partnership deed, a draft of the agreement to be executed by the Operators in favour of the Ponnee Agencies for payment of the commission was prepared, and, after getting that draft approved by Shri Anbil Dharmalingam, Rajagopal took it to C. P. Khemka and requested him to get the same executed by all the other Operators who were based at Bombay. Khemka took over this draft from Rajagopal and sent it to Shri J. R. Modi, the then President of the Association under cover of his letter, dated May 4, 1970. In terms of the draft agreement, the Operators were to pay to Ponnee Agencies, commission at the rate of 50 paise per acre if the contracts were awarded at the rate of Rs. 9 per acre. A part of this commission was to be paid in advance, at the time of finalisation of the contracts by the Government.

On May 4, 1970, Rajagopal and Shri Anbil Dharmalingam both came to Madras from Tiruchirappalli. On the following morning both went to the room of Shri M. Karunanidhi, Chief Minister in the Secretariat. While Shri Anbil Dharmalingam went into the Chamber and talked to the Chief Minister, Rajagopal waited outside. After coming out, he told Rajagopal that the Chief Minister, Mr. Karunanidhi, had assured him that the Operators would be given the contracts at the rate of Rs.9 per acre, and for that purpose, he would give the necessary directions to the Director of Agriculture. The Chief Minister soon thereafter sent for Shri Hari Bhaskar and after ascertaining from him the factual position about the tenders called and received, directed him to award the contracts to the members of the Association at the rate of Rs. 9 per acre for an area of 8.5 lakh acres, and to Pushpaka Aviation (P) Limited, at the rate of Rs. 8 per acre, for an area of 1.5 lakh acres. *He also specifically directed Shri Hari Bhaskar not to negotiate with the tenderers.*

After receiving these instructions from the Chief Minister Hari Bhaskar returned to his office. He found Shri Anbil Dharmalingam and Rajagopal waiting there for him. Shri Anbil Dharmalingam told Hari Bhaskar that he was interested in the award of the contracts to the members of the Association at the rate of Rs. 9 per acre and that he had talked about this matter to the Chief Minister who had assured him that the necessary directions would be given to the Director of Agriculture. Shri Anbil Dharmalingam and Rajagopal were told by Hari Bhaskar that he had already received such directions from the Chief Minister. Shri Anbil Dharmalingam further informed Hari Bhaskar that Khemka would help him in finalisation of the contracts with the members of the Association.

After this meeting with Hari Bhaskar, Rajagopal informed Khemka about the assurance given by the Chief Minister to Shri Anbil Dharmalingam for awarding the contracts at the rate of Rs. 9 per acre to the members of the Association and that the necessary instructions had been issued to Shri Hari Bhaskar, Director of Agriculture in that behalf.

On the following day, the 6th May 1970, Khemka met Hari Bhaskar and discussed the matter with him. During that discussion Hari Bhaskar asked Khemka to persuade the Operators who had quoted in their individual capacity Rs. 9.25 per acre, to reduce their quotations to Rs. 9 per acre. Then, Khemka wrote a letter to J.R. Modi on May 8, 1970, with copies to three other Operators, informing them about the talk he had with the Director of Agriculture, Hari Bhaskar. In this letter he *inter alia* stated :

“The Director of Agriculture has also intimated me that he can finalise the entire issue as he has been given directions to do so without referring the matter to anyone else”.

He further urged the members of the Association to "consider all these points, make up your minds and arrange to intimate me all what is to be done" and "confirm whether one or two of you can come to Madras on the 12th instant to finalise everything". Khemka significantly added :

"When you are here I would like to finalise the Agency Agreement with M/s Ponnee Agencies and please note that all that is happening is of their making".

On May 8, 1970, Khemka also procured from Rajagopal a copy of the Partnership Deed of Ponnee Agencies.

Hari Bhaskar gave instructions to the Joint Director, Agriculture (Shri Reddiar) for allocation of areas for spraying to the Operators in the light of the orders given by the Chief Minister. The Joint Director then reduced the same into a note which was approved by Hari Bhaskar on May 11, 1970 (Ex. CW9/1), while on tour. Hari Bhaskar gave verbal instructions to the Joint Director that the latter should not issue the orders of allocation of areas for spraying to the Operators till his return from tour.

In the meantime, Khemka acting on behalf of all the Operators had further discussions with Rajagopal and informed him that if the rate of commission could be fixed at 40 paise per acre, he would even arrange with the Operators to pay him in advance. After consulting Shri Anbil Dharmalingam, Rajagopal agreed to this proposal. Khemka promptly conveyed his consent to J. R. Mody, the President of the Association, who authorised Khemka to execute the agreement at that rate. Consequently, on May 14, 1970, Khemka passed on the letter of agreement (Ex. CW1/5) in duplicate to Rajagopal. After showing this letter to Shri Anbil Dharmalingam and getting his approval thereto, Rajagopal returned the original, after acceptance, to Khemka, while retaining copy with him.

As the terms of the arrangement with the Operators were well-nigh settled, Rajagopal and his friend, Shri Anbil Dharmalingam grew anxious not to allow that arrangement to fall through because of any laxity on their part. Accordingly, while Hari Bhaskar was on tour, camping at Trichi, Sarvashri Anbil Dharmalingam, Rajagopal and R.N. Narainan met him on May 16, 1970 and requested him to expedite the issue of the contract orders. Hari Bhaskar replied that just as was done in the previous year, the matter would be decided at the level of the Government Secretariat. Shri Anbil Dharmalingam then asked Hari Bhaskar to forward his recommendation to the Secretariat immediately while he would meet the Chief Minister to get the needful done, there. Hari Bhaskar then promised to make the recommendation after his return to Madras. Shri Anbil then asked Rajagopal and his companions to go to Madras where he would join them on the following day.

Rajagopal returned to Madras but Shri Anbil Dharmalingam did not reach there on the 17th as promised.

On May 18, 1970, he went by car to Trichy and from there to Samayapuram where he found Shri Anbil Dharmalingam attending a musical performance. Shri Anbil and Rajagopal returned to Trichy and stayed for the night at the Nathan Press.

On May 19, 1970, Shri Anbil Dharmalingam, from Trichy, in the presence of Rajagopal, phoned to the Chief Minister, Mr. Karunanidhi at Madras, requesting him to direct Hari Bhaskar to issue, early, orders for allocation of areas at the rate of Rs. 9 per acre to the Operators.

On May 20, 1970, Shri M. Vaithialingam, Private Secretary to the Chief Minister, telephoned Hari Bhaskar, on the latter's return to Madras from tour, asking him as to what had happened to the signing of the aerial spraying contracts. Hari Bhaskar replied that he would expedite the same. Hari Bhaskar then took the relevant file to the Secretariat, and discussed the matter with Km. Anna George, the then Secretary, Agriculture, and Shri Venkataramanan, Finance Secretary, and after getting the go ahead signal from them, directed the Joint Director for Agriculture, Shri Radhakrishna Reddiar, to issue orders for spraying at the rate of Rs. 9 per acre and send the same to the Association for transmission to its Members. Pushpaka Aviation (P) Ltd., according to these orders was also allocated 1.5 lakh acres for spraying at the rate of Rs. 8 per acre. Accordingly, on behalf of the Director of Agriculture, the Joint Director under his signature on May 21, 1970, issued the letter, dated May 20, 1970 (Ex. CW 9/2) to the President of the Association. In this letter, after reciting that the individual firms and the Association had quoted the rate of Rs. 9 per acre for spraying from Helicopters, the Director intimated that 8.5 lakh acres under paddy and groundnut were proposed to be covered in 1970-71. He then gave a tentative time-schedule for doing the work. In the last paragraph he said :—

"Please intimate immediately who are the Operators to take up the work and position the Helicopters in the above places by 24th May 1970 positively to commence the spraying from 25th May 1970. The other formalities, viz., signing of the agreement, execution of Security Deposit should be completed before 25th May 1970."

In reply J. R. Mody, President of the Association sent a telegram to the Director of Agriculture intimating their acceptance to undertake the work. Subsequently, he by a letter, dated May 25, 1970, addressed to the Director of Agriculture, Madras, signified their confirmation to commence the work at these rates mentioned in the Director's letter (Ex. CW 9/2). In these communications, the Association suggested that the formal contracts between the Operators and the Government be executed on the 27th or 28th May 1970 and that C.P. Khemka had the necessary authority to finalise the contracts on behalf of the ten members of the Association.

After being convinced that Rajagopal through the influence of his friend Shri Anbil Dharmalingam, was securing for them large-scale contracts at the rate quoted by them, the Operators (the members of the Association) acting through C. P. Khemka, finalised the arrangement by formally executing the Agreement (Ex. CW 1/4) with the Ponnee Agencies on May 29, 1970, at Madras. Some representatives of the Operators were also present there. According to this Agreement, Ponnee Agencies were to be paid 40 paise per acre by the Operator-members of the Association for their services, viz., "canvassing and organizing aerial spraying operations in Tamil Nadu" during the year 1970-71 ending March 31, 1971. At least, 30 per cent of the promised commission for an area of 8.5 lakh acres was to be paid, in advance, within 7 days of the execution of the contract by the Tamil Nadu Government. At the time of the execution of this Agreement, Khemka and the other representatives of the Operators handed over to Rajagopal cheques of the total amount of Rs. 75,000 payable to Ponnee Agencies. The cheques were delivered subject to a "gentleman's agreement" that the same would not be encashed till the contracts between the Operators and the Government, were finalised and orders allocating areas issued.

At this juncture, however, a complication arose. On or about May 29, 1970, Mrs. Sathyavani Muthu, the then Minister for Agriculture, Tamil Nadu, came to know that the Director of Agriculture was about to allot, without her prior approval, aerial spraying work to the Operators at the rate of Rs. 9 per acre. After collecting the necessary information, she directed the Director of Agriculture and the Secretary, Agriculture to call the representatives of the Operators for a discussion with her on June 4, 1970. Accordingly on May 30, 1970, Hari Bhaskar issued a communication requesting the Operators to meet the Minister on the 4th June.

On receiving information that the Agriculture Minister, Smt. Sathyavani Muthu, had convened a meeting to negotiate a reduced rate, the Operators became panicky. C. P. Khemka intimated Rajagopal about this development and alerted him.

On June 2, 1970, Rajagopal reached Tiruchirappalli and passed on the disconcerting information to Shri Anbil Dharmalingam and also apprised him that the Operators had entered into an agreement and delivered Rs. 75,000, in cheques, towards the advance payment of commission. Shri Anbil Dharmalingam thereupon told Rajagopal that he would come down to Madras to meet the Chief Minister for reassuring that the Operators were given contracts at a rate not less than Rs. 9 per acre. He advised Rajagopal that, in the meantime, he should go and tell Khemka that at the meeting convened by Smt. Sathyavani Muthu, the Operators should firmly refuse to do the work at a rate less than Rs. 9 per acre. Rajagopal returned to Madras and communicated what Shri Anbil Dharmalingam had said, to Khemka.

At the meeting held on June 4, 1970, Smt. Sathyavani Muthu, Minister, Agriculture, talked to the representatives of the Operators. The meeting was attended by Khemka, as a representative of the Association. Local representatives of some other Operators were also present. The officials who attended the meeting included Shri Diraviam, Hari Bhaskar and Radhakrishna Reddiar. The Minister told the Operators that the rate quoted by them was on the high side and should be reduced to Rs. 8.25 per acre. Khemka and the other representatives of the Operators stoutly refused to accept this reduced rate, demurring that it was not an economic rate. Thereupon, the Minister dispersed the meeting firmly indicating that she would not give the contracts at the rate of Rs. 9 per acre and that those who wanted to work at Rs. 8.25 per acre should contact the Director of Agriculture and get the work orders. The Minister then recorded a note expressing her view that the contracts should not be awarded at the rate of Rs. 9 per acre. She sent that note to the Chief Minister.

On June 4, 1970, Shri Anbil Dharmalingam came to Madras and personally informed the Chief Minister, Shri Karunanidhi, about the complication caused by Smt. Sathyavani Muthu. Immediately thereupon, the Chief Minister, in the presence of Shri Anbil Dharmalingam, sent for the Chief Secretary, Shri Royappa, and directed the latter to requisition the file relating to aerial spraying forthwith, and see that orders for giving aerial spraying contracts at the rate of Rs. 9 per acre were passed. Accordingly, the Chief Secretary requisitioned the file from the office of the Director of Agriculture and received it the same day.

On June 5, 1970, the Chief Secretary called Hari Bhaskar, Director of Agriculture, and Shri Diraviam, the Secretary for Agriculture, and discussed the matter with them. At this discussion Hari Bhaskar informed the Chief Secretary that the previous orders for starting the spraying work at the rate of Rs. 9 per acre to the members of the Association were given by him, pursuant to

the directions of the Chief Minister. It was also brought to the notice of the Chief Secretary by the officials participating in the discussion, that the Agriculture Minister had at the meeting held on the previous day, offered to give the contracts at a reduced rate. Shri Royappa then told the officials that the Chief Minister had given him instructions to intervene and ensure that the contracts were awarded to the members of the Association at the rate of Rs. 9 per acre. Shri Royappa then dictated the note (Ex. CW 6/2) wherein he formulated these proposals:—

(1) The acceptance of the tender of Pushpaka Aviation (P) Ltd., at Rs. 8 per acre for an extent of 1.5 lakh acres may be approved;

(2) The Director of Agriculture, should reject all the other tenders;

(3) A fresh offer may be made quoting Rs. 9 per acre to individual firms and the Director of Agriculture may allot the acreage according to the capacity of the individual firms who may accept this offer of Rs. 9.

Smt. Sathyavani Muthu was upset on seeing this note as she had issued clear instructions at the meeting held on June 4, 1970 to the officers concerned, that a rate higher than Rs. 8.25 was not acceptable to the Government. She questioned the Chief Secretary about the rate proposed by him. The Chief Secretary told her that in proposing the rate of Rs. 9 per acre, he had incorporated in his note what the Chief Minister had himself decided and ordered. After hearing this from Shri Royappa, Smt. Sathyavani Muthu signed Shri Royappa's note, putting the date, June 8, 1970, under her signature, although she had detected that her note, dated June 4, 1970, marked to the Chief Minister was missing from the file.

On June, 16, 1970, Hari Bhaskar was called by the Chief Minister, Mr. M. Karunanidhi, and directed to submit information about the total area which would be available for spraying by the Operators who were members of the Association, if the allotment of 1.5 lakh acres made to Pushpaka Aviation (P) Ltd., was cancelled. Hari Bhaskar informed the Chief Minister that in the event of cancellation of the allocation made to Pushpaka Aviation (P) Ltd., the total area to be sprayed would be 10 lakh acres. Shri Karunanidhi thereupon directed Hari Bhaskar to cancel the allocation that had been made to Pushpaka Aviation. Accordingly, the same day, Hari Bhaskar made an order cancelling Pushpaka's allocation. After this cancellation a re-allocation statement was drawn up on a sheet of paper in favour of nine other aircraft companies showing the strength of their helicopter fleets and the areas allotted for spraying to each of them. Below this statement, there is an order in the hand of Smt. Sathyavani Muthu bearing the date, June 17, 1970, under her signature. It is as follows :—

“The above allocation of acreage for spraying may be approved. New agreement may be made individually”.

After the signature of Smt. Sathyavani Muthu, the note bears the signature of the Chief Minister, Shri M. Karunanidhi, dated June 17, 1970.

Shri Diraviam, Secretary for Agriculture, communicated these allocations to the Director of Agriculture on June 18, 1970, by sending a copy of this order. Accordingly, the Director of Agriculture allocated areas to the individual Operators for spraying.

After securing information about these allocation orders Rajagopal approached Khemka for introduction to a Bank at Madras. Khemka then introduced M/s. Ponnee Agencies to the Indian Overseas Bank, Esplanade Branch, Madras on June 20, 1970, on which date, Rajagopal deposited the cheques that had been received towards advance commission, for collection in an account opened by him in the name of Ponnee Agencies. The Bank later on collected these cheques. The Bank account was operated jointly by M/s. Rajagopal and Jayaraman.

On receiving the communication from the Director, Agriculture, cancelling Pushpaka's allocation, H.P. Rao of that Company wrote a letter, dated July 6, 1970, representing to the Agriculture Minister for allocation of areas for spraying to his Company, also, at the rate of Rs. 9 per acre. H. P. Rao was informed by the Director of Agriculture, as per his letter, dated August 17, 1970 that the allotment of acreage for spraying to Pushpaka Aviation would be considered only after the positioning of their aircrafts at Madras. By another letter, dated September 7, 1970, H. P. Rao informed the Director, Agriculture that helicopters purchased by his Company were expected to arrive in India by the first week of October, 1970. Shri Rao requested that an allotment of 1.5 lakh acres for spraying at Rs. 9 per acre be made in favour of his Company.

Rao learnt that he could not get any spraying work allotted to him without directions from the Chief Minister. He, therefore, approached the Chief Minister, Shri Karunanidhi, through one Kannadasan, a friend of the Chief Minister. Kannadasan, after his talk with the Chief Minister

informed Rao that he should meet Shri Vaithialingam, to whom the Chief Minister had already given the necessary directions.

H. P. Rao then met Shri Vaithialingam sometime in the 3rd week of September, 1970. The latter, in turn, talked to Hari Bhaskar and informed him that, as desired by the Chief Minister, Shri M. Karunanidhi, Pushpaka Aviation may be allowed to deposit security. Accordingly Hari Bhaskar allowed H. P. Rao, to deposit Rs. 5,000 as security in the Reserve Bank of India, Madras on September 17, 1970.

The representation, dated September 7, 1970, made by H. P. Rao was first dealt with in the Agriculture Department, Secretariat, Madras by Shri V. Sundaram, then Under-Secretary who in his note formulated these issues for consideration of the Government:

(a) Whether M/s. Pushpaka Aviation (P) Ltd., may be allotted any area for aerial spraying. If so, to what extent thereof;

(b) Whether rate of Rs. 9 per acre for helicopter that has been admitted in the case of the other firms during 1970-71 may be extended to Pushpaka Aviation (P) Ltd., also, notwithstanding their earlier offer of Rs. 8 per acre.

Below this office note, Shri Diraviam, the then Secretary, Agriculture, made these suggestions :

"D.A. may be requested to allot one lakh acre to Pushpak and set it off against the shortfall in the performance of the other Companies.

D.A. may also persuade the Company to accept payment at their original offer of Rs. 8 per acre. If they are not agreeable we have no option but to give them Rs. 9 per acre."

Smt. Sathyavani Muthu, the Agriculture Minister, signed this note on September 26, 1970 and marked it to the Chief Minister. 'The file remained' with the Chief Minister for more than 1-1/2 months. On November 10, 1970, the Chief Minister made thereon this order in his own hand :

"Secretary Agriculture may speak

(Sd.) M. Karunanidhi."

In the beginning of November 1970, H.P. Rao again approached Shri Vaithialingam with a request that he should also get the rate of Rs. 9 per acre which rate had been allowed to the other Operators. Shri Vaithialingam promised to inform him after consulting the Chief Minister. A few days later, Shri Vaithialingam told H.P. Rao that the Chief Minister, while passing orders on November 10, 1970 asking the Secretary, Agriculture to speak to him, had instructed him (Vaithialingam) to tell Rao that the Chief Minister was agreeable to an allocation of 1.5 lakh acres for spraying to Rao provided he paid Rs. 25,000. Rao pleaded that since his helicopters were in position in Madras only from the first week of November, he would not be in a position to complete spraying of 1.5 lakh acres and consequently it would be difficult for him to pay Rs. 25,000 to the Chief Minister. Shri Vaithialingam, however, promised that his Company would be compensated in the next season. On this assurance, H. P. Rao agreed to pay the amount.

On October 8, 1970, Shri P. N. Vedanarayanan had taken over as Secretary, Agriculture, from Shri Diraviam. On receipt of this file, Shri Vedanarayanan made inquiries from the Director, Agriculture, studied the office notings and other records. He also spoke to Shri Vaithialingam who told him that the Chief Minister was interested in giving 1.5 lakh acres for spraying to Pushpaka Aviation at the rate of Rs. 9 per acre. After gathering all the information Shri Vedanarayanan prepared a draft note (CW 6/3) in which he suggested allocation of acreage to Pushpaka Aviation at the old rate quoted by them, and, in case the Director of Agriculture was not able to make them agreeable to the old rate, then rate of Rs. 9 per acre could be given to that Company also. Shri Vedanarayanan received another telephone call from Shri Vaithialingam, that he was required to see the Chief Minister who was desirous of allocating areas for spraying to Pushpaka Aviation at the rate of Rs. 9 per acre.

Pursuant to that call, Shri Vedanarayanan went to the Chief Minister, 2 or 3 days after receiving the file, and tried to canvass in favour of the proposal adumbrated in the note of his predecessor-in-office, Shri Diraviam. He submitted that Pushpaka Aviation should be persuaded to agree to accept Rs. 8 per acre which they had originally quoted. Shri Karunanidhi did not feel happy at the argumentative attitude of Shri Vedanarayanan, and directed the latter to put up directly to him a proposal, without delay, recommending allocation of 1.5 lakh acres to Pushpaka for spraying at the rate of Rs. 9 per acre. Shri Vedanarayanan came out from the chamber of the Chief Minister

and informed Shri Vaithialingam about what had transpired at his discussion with the Chief Minister. Thereupon, Shri Vaithialingam told him that the Chief Minister was demanding Rs. 25,000 from H. P. Rao of Pushpaka Aviation as consideration for allocating to them 1.5 lakh acres at the rate of Rs. 9 per acre. He therefore, advised Shri Vedanarayanan to prepare a revised note which might meet the desire of the Chief Minister.

Shri Vedanarayanan thereafter procured more information from the Director of Agriculture and prepared another note, dated November 17, 1970 (Ex. C.W. 6/4) and, instead of taking it personally, sent it through "Tapal" (messenger) to the Chief Minister. In this note, he gave facts and figures of the areas covered by the other Operators by that time and indicated that there was an overall left-over of 1.55 lakh acres. In the penultimate and last paragraphs of this note, he stated :

"Pushpaka Agencies have brought 2 helicopters and have stationed them at Meenambakkam. It has been verified by D.A. that they are ready to operate at short notice. The proposal to entrust Pushpaka Agencies for aerial spraying may be approved.

Reports are being received by the D.A. from the Companies surrendering portions of areas."

(Sd.) VEDANARAYANAN,
17-11-70"

The proposal of Shri Vedanarayanan in this note was non-committal in respect of the rate to be awarded and the area to be allocated to Pushpaka Aviation.

In the meantime, H. P. Rao, to comply with the demand made by the Chief Minister, through Shri Vaithialingam, withdrew Rs. 25,000 on November 17, 1970 by cheque No. 25226, dated 16th November 1970 (Ex. C.W. 5/4) from the First National City Bank, Mount Road, Madras and paid this amount the same day to Shri Vaithialingam, who, in turn, passed it on to the Chief Minister on the same day at his residence in Gopalapuram.

Mr. Vedanarayanan's note, dated 17th November 1970 (Ex. C.W. 6/4), came up before the Chief Minister on November 18, 1970. Since this note did not contain any self-contained proposal in favour of Pushpaka, as earlier directed by the Chief Minister, the latter marked "M" in the margin of a portion of the office-note, dated September 25, 1970 (Ex. C.W. 6/5A) of Shri V. Sundaram, Under-Secretary, and wrote the order in his own hand below the note of Shri Vedanarayanan:

" 'M' on page 2 ante may be done.

(Sd.) M. KARUNANIDHI,
18-11-70."

The portion of V. Sundaram's note marked "M" was to this effect :

"They (Pushpaka) have therefore requested the Government to allot an extent of 1.5 lakh acres during 1970-71 to them at the rate of Rs. 9 per acre—the rate has been fixed by the Government for aerial spraying by helicopters this year".

The same day, these orders of the Chief Minister were conveyed to the Director, Agriculture, for immediate action. The Director forthwith issued two orders, dated 18th November 1970 and 19th November 1970, allocating 60,000 acres for spraying to Pushpaka Aviation.

H. P. Rao wrote another letter, dated November 16, 1970, to the Agriculture Minister, praying for allocation of 75,000 acres which was the short-fall in the acreage promised to Pushpaka Aviation. When no action was taken on this representation, Rao again met Shri Vaithialingam for getting more allocation. On Shri Vaithialingam's suggestion, Rao sent another representation, as per letter, dated February 6, 1971, to the Chief Minister, Shri M. Karunanidhi. In this letter, he *inter-alia* mentioned "for attention of Shri M. Vaithialingam, Private Secretary to the Chief Minister."

Rao followed it up by sending another letter, dated February 25, 1971, addressed to the Chief Minister, repeating his request for allocation of further areas during Navrai crop. Vaithialingam endorsed this representation for necessary action to the Secretary, Agriculture. He also informed Vedanarayanan on phone that the latter should direct the Director of Agriculture to allocate more acres for spraying in the forthcoming Navrai crop to Pushpaka Aviation. Thereupon, the Secretary issued a Memo. dated March 3, 1971, to the Director of Agriculture requesting him to allot more acreage to Pushpaka. Accordingly, the Director of Agriculture allotted more areas to Pushpaka for spraying during Navrai season as well.

Since the work orders at the rate of Rs. 9 had been issued to the Operators who were members of the Association, Rajagopal out of the commission received in advance and deposited by him in the Bank, withdrew a sum of Rs. 29,000 by cheque on July 1, 1970, and out of this amount, paid Rs. 20,000 in 100 Rupee currency notes to Shri Anbil Dharmalingam who was then staying in Rajagopal's Guest House at Madras. Subsequently, on different occasions, according to Rajagopal, he paid Rs. 20,000 more to Shri Anbil Dharmalingam.

Since the operators, based in Bombay, defaulted in the payment of further commission, Rajagopal and Jayaraman, as desired by Shri Anbil Dharmalingam, proceeded to Bombay for making a demand for the same. The Operators assured them that they would be able to pay the commission in arrears, only after the clearance of their pending bills by Tamil Nadu Government. Rajagopal and his companions returned to Madras and informed Shri Anbil Dharmalingam about their talks with the Operators. The arrears remained unpaid, despite repeated demands made by Rajagopal and Jayaraman, till the time for calling tenders for aerial spraying contracts for the year 1971-72 arrived. Rajagopal offered to help the Operators in securing contracts for the year 1971-72 at the rate of Rs. 11 per acre, subject to the condition that they would first pay the commission in arrears, due to Messrs. Ponnee Agencies for the acreage covered by them during 1970-71. The Operators thereupon paid Messrs. Ponnee Agencies the balance of the commission.

The statement of account with the Overseas Bank, Madras, shows that a total amount of Rs. 2,01,236-58 was deposited to the credit of Messrs. Ponnee Agencies by the Operators.

Aerial Spraying Contracts for the year 1971-72.

In February 1971, Shri Anbil Dharmalingam was elected to the State Legislative Assembly. On March 15, 1971, he was sworn in as Minister for Agriculture in Shri Karunanidhi's Cabinet. S. A. Ramachandran, Regional Manager of Helicopters Services (Private) Limited, based at Madras, was keeping his Managing Director, J. R. Modi (who was also the President of the Association till the middle of May 1971), informed through correspondence, of the developments having a bearing on their aerial spraying business. On May 25, 1971, Cambata was elected as President of the Association. James Fredrick of Messrs. Farm Home Services, Madras, became a local representative of Cambata Aviation (Private) Limited. Similarly, K.N.A. Krishnan, Director of Agricultural Aviation (Private) Limited, Bombay was based at Madras. Sarvashri Vedanarayanan and Hari Bhaskar continued in the post of Secretary, Agriculture, and Director of Agriculture, respectively, during this year.

Immediately on his taking over as Minister for Agriculture on March 15, 1971, Shri Anbil Dharmalingam asked Hari Bhaskar and Vedanarayanan, when they went to offer him congratulations, that they should call tenders for aerial spraying programme for 1971-72, forthwith. Accordingly, on March 16, 1971, proceedings for that purpose were initiated in the Directorate and a notification inviting tenders was despatched on March 17, 1971 for publication. Copies of this notification were sent to all the Operators on the Approved List, including H. S. Shoba Singh (Private) Limited. The quotations were required to be submitted before April 17, 1971.

Shri Anbil Dharmalingam also directed Rajagopal to take up the matter of settling commission with the Aircraft Operators in respect of aerial spraying contracts for the year 1971-72. Accordingly, Rajagopal took up the matter with the local representatives of the Operators, namely, S. A. Ramachandran, Pat Dimney and James Fredrick. Rajagopal informed them that Shri Anbil Dharmalingam being the Minister for Agriculture, he would be in a position to get very favourable rates for the Operators. He reminded them that for procuring the rate of Rs. 9 per acre for aerial spraying during 1970-71, it was Shri Anbil Dharmalingam who was the force behind Messrs. Ponnee Agencies. Negotiating from this position of strength, Rajagopal asked the Operators that they should enhance the commission rate for securing contracts for the year 1971-72, to Re. 1 per acre. The representatives suggested that Rajagopal should meet the Operators to settle this matter. He met H. P. Rao and J. R. Modi. The latter was then President of the Association. He told them that he was in a position to get, for aerial spraying from Helicopters, in Tamil Nadu during 1971-72, contracts at the rate of Rs. 11 per acre provided the Operators paid him commission at Re. 1 per acre. S.A. Ramachandran, by his letter, dated March 15, 1971 (Ex. C.W. 4/5), *inter alia* informed J. R. Modi that Shri Anbil Dharmalingam, a friend of Rajagopal, was "the chief power behind Messrs. Ponnee Agencies", and recommended that Messrs. Ponnee Agencies should be re-appointed their agents for the year 1971-72.

A meeting of the Association was held on March 26, 1971 at Bombay. It decided that all the members of the Association should, in response to the notification inviting tenders in respect of aerial spraying programme in Tamil Nadu for the year 1971-72, quote uniformly the rate of Rs. 10 plus Re. 1-(for flagging, etc.) total Rs. 11 per acre. At the request of the members, a draft

tender was prepared by Dastur. This draft was discussed at the meeting of the Association held on April 3, 1971. Accordingly, all the members of the Association, including H. P. Rao, who had by then become a member, uniformly quoted Rs. 11 per acre. In this meeting, it was further decided that a Sub-Committee consisting of Suresh Kumar Sanghi of Sanghi Aviation (Private) Limited, K. P. Raman of Agricultural Aviation (Private) Limited and H. P. Rao of Pushpaka Aviation (Private) Limited, be asked to attend the opening of the tenders at Madras and to negotiate the terms and conditions of the work directly with the Government of Tamil Nadu. However, S.S. Bubber, Managing Director of Messrs. H.S. Shoba Singh (Private) Limited, though a member of the Association, decided that he would quote independently.

Tenders were opened by the Joint Director of Agriculture on April 8, 1971 in the presence of the representatives of the tenderers, including the three members of the Sub-Committee of the Association. In all, 13 concerns submitted their tenders. Out of them two were not on the Approved List of the Operators. The remaining 11 were all on the Approved List and were members of the Association. All the 13 concerns, except H.S. Shoba Singh (P) Limited; quoted these rates for every acre sprayed, irrespective of the area allocated:

	<u>L.V.C.</u>	<u>U.L.V.</u>
	RS.	RS.
For Helicopter	10	5
For Fixed Wing	8	4

In addition to the above rates, these 12 concerns quoted a further sum of Re. 1 per acre to be collected as ancillary charges for flagging, etc.

The rates quoted by H.S. Shoba Singh (P) Limited were as follows :—

	<u>L.V.C.</u>	<u>U.L.V.</u>
	RS.	RS.
For Helicopter—		
Upto 1 lakh acres	10.00	5.00
Over 1 lakh acres	9.50	4.50
For Fixed Wing—		
Upto 1 lakh acres	8.00	4.00
Over 1 lakh acres	7.50	4.00

This concern did not quote any additional or ancillary charge over and above these rates.

In a nutshell, the picture emerging from the opening of tenders was, that 12 concerns (ten of which were members of the Association) for spraying from Helicopters, uniformly quoted Rs. 11 per acre, while H. S. Shoba Singh (P) Limited quoted Rs. 10 per acre for the first 1 lakh acres and Rs. 9.50 for an area over 1 lakh acres.

In the note submitted by the Director of Agriculture, it was, *inter alia*, stated that H. S. Shoba Singh (P) Limited, had quoted a rate of Rs. 5.98 per acre during the year 1969-70 which resulted in unsatisfactory, incomplete work and—“ The Government in their memo. No. 48334/HS, dated 3rd October 1970 have informed that in view of their performance during 1969-70 the question of allocation of work (to them may be considered carefully by D.A.)”.

The members of the Sub-Committee of the Association during their visit to Madras met Rajagopal and Jayaraman of Ponnee Agencies. Rajagopal impressed on them, that since his close friend, Shri Anbil Dharmalingam, was then the Minister for Agriculture, he would be in a position to procure for them the rate of Rs. 11 per acre. Rajagopal and his companion, however insisted on settlement of the commission accounts of the previous year before doing anything for the Operators in respect of the aerial spraying rate for the year 1971-72. They also claimed an enhanced rate of commission at Re. 1 per acre. The members of the Sub-Committee assessed the circumstances prevailing at that time and reached the conclusion that Rajagopal was still a real force to reckon with.

At the meeting of the Association held on April 19, 1971, the Sub-Committee reported the result of their talks with Rajagopal and Jayaraman. In this meeting it was decided that those members from whom commission for the previous year was due to the Ponnee Agencies, should immediately settle their accounts.

In the last week of April, 1971 Rajagopal and Jayaraman met Cambata and the other Operators at Bombay, and repeated their demand for payment of the arrears and for negotiating a new arrangement for the year, 1971-72. Some of the Operators paid the arrears due to Rajagopal.

On May 5, 1971, a meeting of the Association was held at Bombay to finalise the accounts with the Ponnee Agencies in respect of the year 1970-71, and to consider the terms and conditions for appointing agents at Madras for the year 1971-72. Rajagopal and Jayaraman, also, attended this meeting, on invitation. They assured the members that they could procure a rate of Rs. 11 per acre for them from the Government of Tamil Nadu provided the Operators paid them commission at the rate of Re.1 per acre.

At the other end, in Madras, Shri Anbil Dharmalingam asked Vedanarayanan, Secretary, Agriculture, if it would be feasible to give aerial spraying contracts to the members of the Association at the rate of Rs. 11 per acre in view of the lower quotation given by H. S. Shoba Singh (P) Limited. Vedanarayanan replied in the negative, adding that H. S. Shoba Singh (P) Limited was on the approved list of the Government of India and there was no flaw in their tender. Vedanarayanan further informed the Minister that since the Government of India had fixed a ceiling rate for spraying from helicopter at Rs. 10 per acre, it would be objectionable to give the Operators Re. 1 per acre in excess of the ceiling rate. Despite the disagreement expressed by the Secretary, Shri Anbil Dharmalingam was insistent that the contracts should be given at the rate of Rs. 11 per acre.

With the assistance of Rajagopal, H. P. Rao met the Minister, Shri Anbil Dharmalingam on May 13, 1971, and canvassed on behalf of the Association for the rate of Rs. 11 per acre. Shri Anbil Dharmalingam told Rao, in the presence of Rajagopal, that he would inform them within a day or two, after discussing the rates with the Chief Minister.

Rao was much impressed by the performance of Rajagopal and his influence on Shri Anbil Dharmalingam. Rao conveyed this impression and all about his discussion with the Minister arranged by Rajagopal, to the President of the Association, by a letter, dated May 13, 1971.

After a few days, Rajagopal informed H. P. Rao that Shri Anbil Dharmalingam had assured him that the members of the Association would be given contracts for aerial spraying from helicopters, at the rate of Rs. 11 per acre, that the aerial spraying programme during the year 1971-72, would cover an area of about 10 lakh acres in Tamil Nadu; that the commission calculated at the rate of Re. 1 per acre, payable in respect of that area, would be Rs. 10 lakhs, out of which Rajagopal would be entitled to receive 20 per cent as his share, while from the rest, Shri Anbil Dharmalingam was to pay Rs. 5 lakhs to the Chief Minister, Shri M. Karunanidhi. Shri Anbil Dharmalingam further advised Rajagopal to start another Agency with a different name for the year 1971-72.

Accordingly, Rajagopal floated another Agency or firm under the name and style of Messrs. Ponnee Enterprises. A partnership deed (Ex. C.W. 1/7) was executed on April 10, 1971 under which there were three partners, namely, V. Rajagopal, T. Kankavel and N. Jayaraman. T. Kankavel is the brother-in-law of Rajagopal.

Rajagopal gave a draft of the agreement to be signed by all the members of the Association to H. P. Rao, when the latter came to Madras for discussion in the third week of May, 1971. According to this draft, the Operators had to pay commission at the rate of Re. 1 per acre to Messrs. Ponnee Enterprises for the acreages covered by them. It was further stated in this document that for the total acreage allotted, 40 per cent of the commission would be paid immediately on the execution of the contracts with the Tamil Nadu Government and the balance of 60 per cent, on completion of the work in respect of every 30,000 acres. This draft agreement was then sent by Rao with a covering letter, dated May 25, 1971, to Cambata, who had then become the President of the Association. Cambata circulated copies of this draft, with his comments, to all the members of the Association.

On June 3, 1971, a meeting of the Association was held at Bombay to consider the appointment of Ponnee Enterprises as their agents at Madras.

Sometime in June, 1971, H.P. Rao went to Madras and informed Vaithialingam that Shri Anbil Dharmalingam had, after discussing the contractual rates with the Chief Minister, indicated to the members of the Association, through Rajagopal, that work of aerial spraying would be allotted to them on condition of paying Re. 1 per acre as commission to Messrs. Ponnee Enterprises. Rao further informed Vaithialingam that the members of the Association were not inclined

to pay more than 80 paise per acre. Vaithialingam then told Rao that the Chief Minister was not happy about the method in which Shri Anbil Dharmalingam had collected the commission during the year 1970-71 through Rajagopal. Vaithialingam suggested that H. P. Rao should himself undertake to collect the commission from the members of the Association and pass on the same to the Chief Minister. H. P. Rao regretted his inability to accept the suggestion as he thought that this might lead to misunderstanding with his business colleagues.

On May 24, 1971, S. A. Ramachandran, who was keeping himself informed of the developments, wrote a letter to J. R. Moudi informing him that H. P. Rao was hobnobbing with Vaithialingam. He also wrote that Rajagopal was apprehending that there was a move to bypass him by getting the work done through someone else.

In June 1971, Shri Anbil Dharmalingam told Vedanarayanan that the Chief Minister desired that no contract should be awarded to H. S. Shoba Singh (P) Limited, even though their quotation was the lowest. Shri Anbil Dharmalingam directed the Secretary to find out an excuse to cancel the tender of H. S. Shoba Singh (P) Limited.

Sometime in the first fortnight of June 1971, the Chief Minister called Hari Bhaskar, twice, in the chamber of the Chairman, Legislative Council, on different dates, and directed that no contract for aerial spraying be given to H. S. Shoba Singh (P) Limited.

At the meeting of the Association held in camera on June 15, 1971, to discuss the draft agreement with Ponnee Enterprises, H. P. Rao reported that Rajagopal no longer had adequate influence with the Agriculture Minister and the Chief Minister, to serve the cause of the Association. The President of the Association, however, explained that from the discussions he had with Rajagopal, he was of the opinion that Rajagopal could still render effective help in getting them the rate of Rs. 11 per acre. After a discussion, it was tentatively decided that they would offer to Ponnee Enterprises commission at 80 paise per acre, if they were assured to get contracts at the rate of Rs. 11 per acre. Thereafter, Jayaraman and Rajagopal who had come to Bombay on invitation, were called in and were told that the Operators could pay only 80 paise per acre as commission. Rajagopal said that he could not scale down the rate of the commission demanded, without getting prior approval of Shri Anbil Dharmalingam. To demonstrate this, Rajagopal put through a trunk call to Madras and talked to Shri Anbil Dharmalingam on, telephone, in the presence of Cambata in the latter's office room. After this talk, he informed the Operators that the Agriculture Minister had agreed to the payment of commission at 80 paise per acre, for awarding the contracts at the rate of Rs. 11 per acre.

On June 25, 1971, V. Rajagopal and Jayaraman as representatives of Ponnee Enterprises met Cambata and reiterated Rajagopal's claim, owing to his intimate connections with the Minister, Shri Anbil Dharmalingam, to procure a rate of Rs. 10 plus Re. 1 for helicopter, and Rs. 8 plus Re. 1 for fixed wing in the State of Tamil Nadu for spraying approximately 8.5 lakh acres of paddy with a possibility of further 2 lakh acres of cotton provided commission at the rate of 80 paise per acre was paid. To demonstrate his capacity to get the needful done for the Operators, he told them that he could on his return to Madras, arrange a meeting between Shri Anbil Dharmalingam, Minister for Agriculture and the Operators and the latter could get the necessary assurance about Rajagopal's credentials from the Minister himself. The draft terms of an agreement to be entered into by the Operators with the Ponnee Enterprises was also shown to Cambata, a copy of which had already been received by him under cover of letter (CW-8/5), from H.P. Rao. Rajagopal also requested that each Operator-member of the Association could pay an advance of Rs. 10,000 to be adjusted against the commission which would be finally found due. The President requested Rajagopal to go ahead and arrange the necessary meeting between the Minister and the Operators and thereafter they would ratify and execute the agreement with Ponnee Enterprises that had been tentatively agreed upon by them. Rajagopal then returned to Madras by air.

On June 27, 1971, Rajagopal sent a telegram (CW-8/8) to Cambata informing him that the meeting of the Operators with the Agriculture Minister, Shri Anbil Dharmalingam had been arranged for July 2, 1971. The Director of Agriculture, Madras had also written to the Operators, earlier a letter, dated June 26, 1971, that their meeting with the Minister had been fixed for July 1, 1971 "for finalising tenders" in regard to aerial spraying work in Tamil Nadu during 1971-72. Subsequently, by a telegram, dated June 28, 1971, he informed Cambata that the meeting had been postponed to July 2, 1971. After the receipt of this telegram, another meeting of the Association was held on June 29, 1971 wherein by a resolution (CW-8/10), Cambata the President of the Association, was authorised by the Members to enter into an agreement with Ponnee Enterprises and also to negotiate on their behalf the rate for aerial spraying with the State Government. It was further decided that all the Operators must attend the meeting fixed for July 2, 1971 with the Minister.

On July 2, 1971, R.S. Cambata, as President of the Association, and Managing Director of Cambata Aviation (P) Ltd., R. H. Captain of AV India (P) Ltd. H.P. Rao of Pushpaka Aviation (P) Ltd., Dastur of Mahindra and Mahindra (P) Ltd., and others reached Madras by air. James Fredrick, local representative of Cambata Aviation met them at the airport and informed that the meeting had been arranged at the residence of the Minister for Agriculture at about 4 p.m. At Madras, they stayed in the Connemara Hotel. A little before 4 p.m. Cambata and his companions reached the residence of the Minister, Shri Anbil Dharmalingam and waited there. V. Rajagopal came there at about 4 p.m. and went inside into the room of the Minister, Shri Anbil Dharmalingam. After sometime, Rajagopal came out and told Cambata and his companions that the Minister had agreed to give them the contracts at the rate of Rs. 11 per acre provided they finalised and executed the agreement in favour of Ponnee Enterprises agreeing to pay commission at the rate of 80 paise per acre. Cambata and his companions however insisted on verifying Rajagopal's information directly from the Minister himself. Rajagopal then went into the Minister's room in the interior and returned with the Minister, Shri Anbil Dharmalingam. The Minister personally told the Operators that he was agreeable to give them contracts at the rate of Rs. 11 per acre provided Rajagopal was given the commission. The Operators then thanked the Minister.

On their return to Connemara Hotel, the Operators who were demonstrably convinced that Rajagopal was the mouthpiece of the Minister, executed the Agreement (Ex. CW-2/6) agreeing to pay commission at 80 paise per acre to Ponnee Enterprises, who were appointed as agents of the Association, and these agents had to submit periodically brief reports on the programme of the activities in respect of plant protection, etc. The agents had also to keep the Association and its members duly advised of the agents' promotional activities and business prospects available to the Association and the members thereof. The commission was payable on the actual acreage sprayed and contracted for during the period of 12 months commencing from July 2, 1971. This agreement was to become operative on the execution of the contracts which were then expected to be executed by July 10, 1971.

While at Madras, on July 2, 1971, the Operators after seeing the Minister, met Hari Bhaskar and informed him that the Minister had agreed to grant them contracts at the rate of Rs. 11 per acre for aerial spraying from helicopters provided they paid commission at the rate of 80 paise per acre to his friend, Rajagopal, in the name of Ponnee Enterprises.

On July 10, 1971, the Operators at Bombay were informed through a telegram by Jayaraman that it was not possible to conclude the contracts on July 10, 1971 and he was asking for extension of the period for the execution of the contract-deeds till 16th July.

On July 16, 1971, Cambata received a telegram (CW-8/12), that a meeting of the Operators with the Minister, Shri Anbil Dharmalingam had been arranged for July 19, 1971. Hari Bhaskar also informed Cambata, through telephone, that their meeting with the Minister had been fixed at 16-30 Hrs. on July 19, 1971. Cambata being unwell, could not go to Madras on the 19th July. He therefore authorised R.H. Captain who was the Vice-President of the Association, to represent the Association and Cambata Aviation (P) Ltd. at this meeting. Accordingly R.H. Captain, Dastur, Suresh Sanghi and other Operators reached Madras and called on Hari Bhaskar and P.N. Vedanarayanan in the latter's office on July 19, 1971.

Prior to this meeting Shri Anbil on July 5, 1971, informed Vedanarayanan that the Chief Minister had accorded approval for giving aerial spraying contracts to the Operators at the rate of Rs. 11 per acre; that the Operators had agreed to pay commission at 80 paise per acre and had settled a deal with Rajagopal but the Chief Minister was desirous of having commission at the rate of Re. 1 per acre. After giving this information, Shri Anbil Dharmalingam asked the Secretary to see that Rajagopal was no longer associated with the collection of the commission from the Operators and directed the Secretary to take up the settling of the commission with the Operators at Re. 1 or at least at 90 paise per acre. Vedanarayanan demurred that it was not within his province to discuss such issues with the Operators. Thereupon, the Minister told him that he was only communicating the orders of the Chief Minister, which had to be complied with.

In pursuance of the aforesaid directions of the Minister, the Secretary asked the Director, through a memorandum, to call for a meeting of the Operators on July 19, 1971.

Again on July 17, 1971, Shri Anbil Dharmalingam, phoned Vedanarayanan that the matter of commission-rate must be discussed with the Operators, who were coming to meet him. As a result, before the commencement of the meeting on July 19, 1971, Vedanarayanan called Hari Bhaskar to his office and conveyed to him the instructions that he had received from the Minister regarding the commission. Vedanarayanan further informed Hari Bhaskar that the Minister had agreed to award the contracts at the rate of Rs. 11 per acre, on the intervention of Rajagopal with whom the Operators had already entered into an Agreement for payment of commission at the rate of 80 paise per acre. The Secretary told the Director, further, that the Minister desired that efforts should be made to get the commission raised to Re. 1, or at least to 90 paise per acre, and that Rajagopal should be got eliminated from this deal about the commission.

After their meeting with the Minister, Vedanarayanan and Hari Bhaskar had a meeting with the Operators over a cup of tea. The Operators then present were : R.H. Captain, Suresh Kumar Sanghi, P.G. Dastoor and H.P. Rao. Vedanarayanan told the Operators that the Agriculture Minister was desirous of raising the rate of commission to Re. 1 or at least 90 paise per acre, and that the enhanced commission should be paid through an agent other than Rajagopal, who would be nominated by the Minister in due course. Thereafter, those Operators accompanied by Vedanarayanan, went to the chamber of the Agriculture Minister, Shri Anbil Dharmalingam. The Minister first talked to the Operators generally regarding the aerial spraying programme and allocations. Thereafter, he called Vedanarayanan and four of the Operators, namely, R.H. Captain, H.P. Rao, Sanghi and P.G. Dastoor into the adjoining room. In the adjoining room Shri Anbil Dharmalingam pressed the Operators to raise the commission to 90 paise per acre and to pay the same through an agent other than Rajagopal, who would be nominated by him. The Operators were told that the agent to be nominated would pass on receipts for the commission paid by them. The Operators said that they could not commit themselves to the payment of any commission as demanded by the Minister, without consulting their President, R.S. Cambata.

On July 20, 1971, P.G. Dastoor telephoned Cambata and fully posted him with all that had transpired at their meetings with the Minister, the Secretary and the Director of Agriculture. He further asked Cambata to come down to Madras, immediately. On July 21, 1971, Cambata arrived at Madras along with Krishnan of Agricultural Aviation (P) Ltd. and some other Operators. Cambata collected all the information from R.H. Captain, P.G. Dastoor, H.P. Rao and S.K. Sanghi, and thereafter, along with other Operators met the Secretary, Agriculture, Vedanarayanan. The latter confirmed that the Minister for Agriculture wanted the commission to be raised to 90 paise as condition precedent for awarding contracts at the rate of Rs. 11 per acre. Vedanarayanan reiterated that the Minister desired that this enhanced commission should be paid through another agent to be nominated by the Minister, and not through Rajagopal. Cambata, Captain and Maneckji then went and saw the Minister in his chamber, in the presence of Vedanarayanan. To seek confirmation, Cambata repeated before Shri Anbil Dharmalingam what had been conveyed to him earlier by Vedanarayanan about the enhancement and collection of the commission. Shri Anbil Dharmalingam confirmed that it was his wish. Cambata pleaded that they had already signed a contract for payment of commission with Rajagopal of Ponnee Enterprises at Shri Dharmalingam's instance, and therefore, they were not in a position to pay commission to two parties. Cambata, further expressed an apprehension, that if they did not pay the commission to Ponnee Enterprises, they might run into trouble. Shri Anbil Dharmalingam then told Cambata and his companions that Rajagopal was his man and had been brought into the picture by him, and that there was nothing to worry about him. Despite the pleadings of the Operators, the Minister adamantly refused to reduce the demand of the commission below 90 paise per acre. The Operators then expressed their inability to comply with the demand, on the ground that they had no money to pay and some of their bills with regard to the work done in 1970-71 still remained unpaid. Thereupon Shri Anbil Dharmalingam asked Vedanarayanan to arrange for the payment of those pending bills of the Operators. The Operators ultimately submitted and agreed to pay the commission to an agent to be nominated by the Minister.

After this meeting, Vedanarayanan further told Cambata that the commission, as desired by the Minister, would have to be paid in advance to the agent, to be nominated by the Minister, who would pass the necessary receipts. Vedanarayanan made it clear to the Operators that the necessary allocation orders would be issued and the formal contract-deeds executed, only after the receipt of the Government Orders regarding the contractual rates to be awarded.

On or about July 23, 1971, Shri Anbil Dharmalingam directed the Secretary, Agriculture that he should put up a note justifying the awarding of the aerial spraying contracts at the rate of Rs. 11 per acre to the Operators for approval by him (Minister) and the Chief Minister so that the contracts at Rs. 11 per acre in favour of the Operators could be executed and delivered to them. The Minister, however, told Vedanarayanan that he should see that 10 per cent as commission was paid by the Operators, in advance. He wanted Vedanarayanan to get a personal guarantee for the payment of commission from Cambata.

Pursuant to the aforesaid directions of the Minister for Agriculture, Vedanarayanan wrote a confidential D.O. Letter (Ex. C.W. 7/4) to Hari Bhaskar stating that taking into consideration the increase in the operational and capital costs, the Government considered the following rates to be reasonable for 1972 :—

- (i) Rs. 11 per acre for helicopters, including Re. 1 for flagging, etc.
- (ii) Rs. 8 per acre for Fixed Wings, including Re. 1 for flagging, etc.

After the issue of this demi-official letter Vedanarayanan verbally instructed Hari Bhaskar that the latter should not mention the contract rates in the orders of allocation, nor should he deliver any signed contracts to the Operators. These verbal instructions communicated by Vedanarayanan were from the Minister and were given to ensure the payment of 10 per cent of the

commission, in advance, and for having a tight control over future payments of the bills of the Operators. The Operators were asked by the Director to give contract-deeds, in duplicate, duly signed by them, on different dates specified by the Director for the purpose. Accordingly, all the nine Operators signed duplicate contract-deeds and delivered the same in the Office of the Director of Agriculture.

Soon after the receipt of the D.O. Letter, dated July 23, 1971, Hari Bhaskar issued orders allocating areas for aerial spraying to the nine operators. In these allocation orders, he, deliberately, in compliance with the verbal instructions received from the Minister, did not mention the rates at which the Operators were to be paid.

In July 1971, Vedanarayanan told H. P. Rao that signed contracts could not be delivered to the Operators till the advance commission demanded by the Minister, was paid. H. P. Rao brought this fact to the notice of Cambata in the meeting of the Association held on July 30, 1971. To verify this information, Cambata sent a telegram (copy Ex. C.W. 8/4) to the Director of Agriculture on July 30, 1971, requesting him to confirm the telephonic conversation he had with the Director. In return, Cambata received a threatening telegram (Ex. C.W. 8/16) from the Director of Agriculture stating that if the Operators did not execute and deliver the contract agreements to the Director by the 5th August 1971, the aerial spraying programme would be cancelled. The telegram was followed by a letter from the Director, to the same effect.

On July 27, 1971, Vedanarayanan, as directed by Shri Anbil Dharmalingam, put up a note for circulation regarding the plant protection aerial spraying programme, for 1971-72, to the Minister of Agriculture and the Chief Minister. In this note (Ex. C.W. 7/5), Vedanarayanan indicated the allocation of acreages to the various Operators at Rs. 11 per acre for spraying from helicopters and Rs. 8 per acre for Fixed-Wing aircraft. The reason for the decision, as given in this note, was the increased cost of propulsion, etc. The Agriculture Minister, Shri Anbil Dharmalingam and the Chief Minister, Shri M. Karunanidhi, both approved the proposals in this note. The Chief Minister signed in token of approval on August 2, 1971 (C.W. 8/18).

On receiving an intimation from his local agent, James Fredrick, that the Director of Agriculture wanted to see him, Cambata along with P. G. Dastoor reached Madras on August 5, 1971. He first met Hari Bhaskar and handed over two copies of a contract agreement signed by him. Hari Bhaskar informed Cambata that he would return one copy of the contract, duly signed by him, in due course.

Cambata then saw Vedanarayanan and asked him why all the allocation orders had not been issued despite their having agreed to pay commission to an agent nominated by the Minister.

Vedanarayanan replied that the Minister had instructed him not to take any further steps towards the allocation of aerial spraying work since the Operators had not paid him the advance commission. He asked Cambata to arrange immediately payment of 10 per cent of the commission, in advance, on the total acreage to be allocated and bring the money to Madras, whereupon he would be giving him the name of the Minister's agent who would receive the same. He also wanted a personal guarantee from Cambata that all the Operators would pay their share of commission regularly to the Minister. Cambata suggested that since the agent would be appointed by the Association, officially, it might be possible for the Government of Tamil Nadu to consider paying directly to the Association 10 per cent out of the bills to be paid to its members for the work done by them, and that such payments could thereafter be passed on to the Minister through that agent, who would issue the necessary receipts. Vedanarayanan observed that Cambata's proposal could be considered if all the Operators consented in writing.

Cambata returned to Bombay, called a meeting of the Operators on August 6, 1971, and informed them about the talks he had with the Secretary, Agriculture and the Director of Agriculture. In that meeting the Association unanimously passed a resolution (Ex. C.W. 2/9A) whereby all its members agreed to give the necessary authority to the Government of Tamil Nadu to pay 10 per cent of what may be due to each Operator, directly to the Association by withholding 10 per cent of their bills. A copy of the Resolution was sent by Cambata to Vedanarayanan under cover of his letter, dated August 11, 1971 (Ex. C.W. 2/9).

Vedanarayanan received Cambata's letter, dated 11th August 1971, along with the resolution passed by the Association, but he did not pass any order thereon because he thought it was not legally permissible to agree to the proposal.

The Operators, having received the allocation orders sometime in the last week of July and the first week of August, 1971, started aerial spraying operations. But no signed contracts duly executed from the side of the Government had been supplied to them. They started the work on the assurance held out by the Director of Agriculture that such contracts would be supplied, in due course. The Director of Agriculture issued a circular order, dated August 10, 1971, informing the District Agricultural Officers that all the pending bills of the Operators relating to the year 1970-71, be paid and their bills for the aerial spraying work done in 1971-72 should be sent to the Director of Agriculture, in original, for clearance. This new system of centralised control over payments was adopted pursuant to the verbal instructions of the Minister and the Chief Minister, as an additional device to ensure payment of the commission to them.

H. P. Rao met the Director of Agriculture, the Secretary Agriculture and Vaithialingam, Private Secretary to the Chief Minister, and pressed them to pay his pending bills relating to the year 1970-71. These officials, during their talks, gave him the impression that the pending bills of the Operators were not being cleared for payment because they had not paid, as promised, the advance commission to the Minister and the Chief Minister. Vaithialingam told Rao that if the Operators did not pay the advance commission to the Minister and the Chief Minister, the Government would be forced to take stern action against them. Vaithialingam suggested to Rao that he should pay a lump sum of Rs. 25,000 to the Chief Minister, towards the advance commission, so that the work of his Company could proceed ahead smoothly and was not adversely affected in any manner. This was on the 12th or 13th August, 1971. H. P. Rao then withdrew a sum of Rs. 30,000 on August 13, 1971 by cheque (Ex. CW-5/5), from the First National City Bank, Madras, and on the same day, paid a sum of Rs. 25,000 out of it to Vaithialingam, as commission for onward transmission to the Chief Minister. Vaithialingam passed on this amount immediately to the Chief Minister and thereafter, telephoned to Vedanarayanan that H. P. Rao of Pushpaka Aviation had paid Rs. 25,000 as advance commission to the Chief Minister, and consequently, Pushpaka Aviation's pending bills should be forthwith settled and the contract, duly signed from the Government side, delivered to Rao. Vaithialingam further conveyed to Vedanarayanan that the bills should be settled and signed contracts supplied, only to those operators who had paid the promised commission, fully. Vedanarayanan, in turn, conveyed the same instructions of the Chief Minister to Hari Bhaskar. Pursuant thereto, the Director of Agriculture vide his order, dated August 13, 1971 (Ex. CW-2/11) issued instructions to all the District Agricultural Officers to settle the pending bills of Pushpaka Aviation (P) Limited for the work done both during 1970-71 and Navrai crop during 1971-72. Further, in the same order, he directed that the old dues of 3 other Operators, namely, Mahindra and Mahindra (P) Limited, Av. India (P) Limited, and Helicopter Services (P) Limited, be also paid. It was further mentioned in this circular letter that outstanding bills of the five under-mentioned Operators should be settled, only after getting clearance from the Director of Agriculture.

- (1) Agricultural Aviation Association.
- (2) Cambata Aviation (P) Limited.
- (3) Sanghi Aviation (P) Limited.
- (4) Maneckji Aviation (P) Limited.
- (5) Khemka Aviation (P) Limited.

The directions to withhold settlement of the bills of these 5 Operators were given pursuant to the verbal instructions of the Chief Minister, received through his Private Secretary, Vaithialingam.

On coming to know that the pending bills of Pushpaka Aviation had been cleared and the signed Contract had been delivered to them, the other Operators contacted H. P. Rao and wanted to know why the payments of their bills had been stopped. Rao after talking to Vedanarayanan, informed P. G. Dastur on telephone, on August 18, 1971, that in the case of the other Operators stop-payment orders had been issued because they had not paid the "promotional expenses" (the commission) as agreed to. Cambata on coming to know about it addressed a letter, dated August 18, 1971, to H. P. Rao, with copies to all the other Operator-Members of the Association, that no member of the Association should make a unilateral move or commitment, without the prior knowledge and approval of the Association. On August 18, 1971, Cambata sent a telegram to Vedanarayanan urging for an early supply of the signed Contracts to the Operators and further requesting him to intimate a date on which the Operators could meet him. In reply, Hari Bhaskar sent a telegram, dated August 20, 1971, asking the Operators to meet Vedanarayanan on August 23, 1971. This date, at the request of Cambata, was postponed to August 30, 1971.

On August 30, 1971, Cambata and R. H. Captain reached Madras and later, there, Krishnan, Pat Dimney and S. A. Ramachandran joined them. All of them met Vedanarayanan. After a general discussion with all the Operators, Vedanarayanan dispersed the meeting, but requested R. H. Captain and R. S. Cambata to stay behind for further talks. Behind closed-doors, Vedanarayanan told R. S. Cambata and R. H. Captain that 25 per cent of the commission should be paid

immediately for the work which had been done by the Operators, to the agent, whose name was still to be indicated by the Minister. The Secretary assured the Operators that as soon as such payment was made, their pending bills would be got cleared for payment. Thereafter Cambata and Captain apprised the representatives of the other Operators about what had transpired at this meeting. S. A. Ramachandran, a local representative of one of the Operators, conveyed everything about this talk in his letter, dated August 31, 1971, to his principal, Jahangir Mody at Bombay.

On their return to Bombay, the Operators took legal advice for chalking out their future course of action. By this time, the Operators had sprayed a substantial area in Tamil Nadu and had incurred heavy commitments to the tune of Rs. 25 lakhs to meet operational expenses. Their bills for the work done were not being settled. They had no formal contract-deeds executed on behalf of the Director of Agriculture, the rate at which they were to be paid was not specified. The Operators were advised by their Legal Advisor that in the absence of any formal contract-deeds executed by the Government, in their favour, they could not enforce their claim in respect of the work already done. Moreover, the Government were in possession of the draft agreements signed by the Operators. There was a penalty clause in those agreements, by invoking which the Tamil Nadu Government could inflict a penalty almost equal to the amount of the expenses which the Operators had already incurred. The Operators were also advised that if any promotional expenses were incurred by the Companies without proper vouchers, they would be in for trouble at the hands of the tax authorities. Appraising the unenviable situation in which they found themselves and realising that in order to save themselves from utter ruin, they had no other go but to submit to the extortionate demands for commission made by the Minister and the Chief Minister, the Operators raised contributions from the accounts of their respective concerns, for payment of 25 per cent of the commission to the Minister for Agriculture.

Cambata on September 7, 1971, sent a telegram (Ex. CW 8/22) to Vedanarayanan stating that all the Operators were desirous of meeting the Minister (Agriculture) on Monday, the 13th September 1971 "with necessary documents and that the Secretary should confirm the time and date of the proposed meeting". It was further mentioned in this telegram for the information of Vedanarayanan, "that no payment has yet been received by the majority of the Operators".

On September 12, 1971, however, Shri Anbil Dharmalingam was dropped from the Cabinet of Shri M. Karunanidhi and Shri P. U. Shanmugham became the Minister for Agriculture.

On September 13, 1971, the Chief Minister, Shri Karunanidhi directed Hari Bhaskar, through Vaithialingam, that payment of all the bills of the Operators be immediately stopped till further orders. While communicating these stop-payment orders to Hari Bhaskar, the Private Secretary, M. Vaithialingam, mentioned that the Aircraft Operators were trying to be smart and had not kept up to their promise to pay commission at the rate of 90 paise per acre to the Chief Minister, and that was why the stop-payment orders had been given by the Chief Minister to teach them a lesson. On receiving these verbal stop-payment orders of the Chief Minister, Hari Bhaskar got an immediate Circular (Ex. CW-9/23) issued by his Office directing the District Agricultural Officers that no bill of the Aircraft Operators for the work done during 1971-72 be settled until further orders. In this Circular, it was further mentioned that "District Agricultural Officers should withhold any Bank Drafts that had already been obtained by the Operators from the Treasuries but are still to be despatched to the Operators". The reason given for stopping this payment was "that Government orders sanctioning aerial spraying scheme for 1971-72 are yet to be received". This reason was obviously wrong. No copy of this circular was officially sent to the Operators but an unofficial copy of the circular was however obtained by James Fredrick and despatched to his Principal, Cambata.

To find out the basis of this stop-payment order, S. A. Ramachandran made enquiries from James Fredrick and others. He then communicated all the information gathered by him with regard to the background of this stop-payment order, to his principal, J.R. Mody, by a letter, dated 15th September 1971 (Ex. CW-4/15).

On 18th September 1971, Cambata, R.H. Captain, H.P. Rao, Krishnan, Ramachandran, Dastoor, Pat Dimney and others met Vedanarayanan in the Secretariat. They requested for the withdrawal of the stop-payment orders. Vedanarayanan expressed his helplessness, adding that the orders had come from the Chief Minister. Vedanarayanan further told the Operators that the Chief Minister had taken over direct control of the aerial spraying programme and consequently, he (Vedanarayanan) was no longer involved.

The Operators then met Shri P.U. Shanmugham, the new Minister for Agriculture, and placed their grievances before him. Shri Shanmugham told them that he was not concerned in the matter, and that if the Operators had anything to say they should approach the Chief Minister, who was then handling the subject of aerial spraying.

The Operators thereafter asked H.P. Rao that he should arrange their meeting with the Chief Minister through Vaithialingam. H.P. Rao then arranged a meeting of the Operators with Vaithialingam. Four of the Operators, namely, Cambata, Captain, Rao and Dastoor met Vaithialingam and explained to him their difficulties in detail. They pleaded that the burden of 90 Paise per acre demanded as commission was too heavy and must be scaled down. Vaithialingam told Cambata and his companions that he would apprise the Chief Minister of all that they had submitted and then inform them of the decision of the Chief Minister, on telephone by 6 p.m. the same evening. The Operators went back to the Connemara Hotel. At about 6 p.m. they received a telephone call from Vaithialingam to come and see him in his office. Cambata and his companions, Captain, Dastoor and Rao met Vaithialingam in his chamber in the Secretariat. Vaithialingam informed them that the Chief Minister did not want to see them, but desired him to convey to them that if they did not pay the agreed commission at 90 Paise, immediately, in advance, without any vouchers, they would not receive any payments of their bills for the work already done and further aerial spraying programme would be cancelled. By that time, the Operators had already sprayed over three lakh acres, and they had not been supplied any signed contracts duly executed from the Government side. On hearing this decision of the Chief Minister, the Operators were shocked and entreated that they were unable to pay commission at the rate of more than 80 paise per acre and that, too, they could arrange to pay if proper vouchers were given to them against the payment of that commission. They impressed upon Vaithialingam that they had no funds or income "off-the-record" and the payment of this commission was required to be shown by the Companies in their accounts for income-tax purpose. Cambata further submitted that all the Aircraft Companies were running at a loss and it was impossible for them to bear this burden. Vaithialingam replied that the Tamil Nadu Government was not concerned with their difficulties and that if they did not pay the commission "off-the-record", as demanded, they would not be able to do any further work in Tamil Nadu. When the Operators further pleaded their inability to pay commission, without vouchers to evidence the payment, Vaithialingam pointed out towards H.P. Rao and said that he had already paid and, as a result, Rao's Company had received payment of their bills for the work done by them. Cambata and his other companions were surprised at this disclosure. They requested Vaithialingam to give them five minutes to assess the situation, separately. Vaithialingam reminded them that the time was running out and they must make the payment immediately. After some time, Cambata and his companions returned and again expressed their difficulties before Vaithialingam. After a good deal of pleading by the Operators, Vaithialingam told them that the only concession that he could agree to was that the Operators should return on the 22nd September 1971, with 50 per cent of the commission, that is, 45 paise per acre in respect of the work done up to the 19th September 1971.

Cambata and his companions returned to the Connemara Hotel and informed the other Operators of the result of their talk with Vaithialingam, and requested them to supply the figures of the aereages sprayed by them up to the 19th September, 1971. The Operators agreed to contribute their respective shares, calculated at the rate of 45 paise per acre in respect of the aereages covered by them up to the 19th September and then pay the pooled amount to the Chief Minister through Vaithialingam by the 22nd September 1971. Cambata also asked Krishnan of Agricultural Aviation, who was stationed at Madras, to collect all the necessary particulars with regard to the aereages sprayed by the Operators and verify the same from the office of the Director of Agriculture. Accordingly, Krishnan gathered that information and prepared a statement giving all the necessary data relating to the period from 6th August 1971 to 19th September 1971.

Cambata, the President of the Association, and his companions came to Madras on 22nd September 1971. They met at the Connemara Hotel, where Krishnan produced the Master List, *in duplicate*, containing the necessary data. In accordance with the figures in that list, all the Operators handed over their contributions, in envelopes, on each of which the name of the contributing Operator and the amount of the contribution were noted. The contributions thus pooled made a total of Rs. 1,17,273. All the envelopes were then put in a brief case, along with a copy of the Master List. The Operators then telephoned Vaithialingam, who asked them to come over to his residence. Guided by James Fredrick, Cambata, Captain and Dastoor went to the residence of Vaithialingam. The other Operators stayed back in the Hotel. Cambata and his two companions were received by Vaithialingam in his residence. Vaithialingam then took over the brief case from Cambata, opened it, looked at the envelopes and tallied the writings on them with the figures in the Master List. He then retained the brief case along with the money and assured the Operators that the payments of their pending bills would be released soon, while payments of their bills for the current year would also be made in normal course within one week of the submissions of their bills. Vaithialingam promised to inform them about the date for payment of the next instalment of the commission. As Cambata and his companions came out, they saw Vaithialingam proceeding from the house in his car, with the brief case. After this payment, on the same date, Vaithialingam telephoned Hari Bhaskar to clear forthwith the pending bills of the Operators. Hari Bhaskar, accordingly, instructed the Deputy Director, Shri Marar. Marar recorded an office note, dated 23rd September 1971, that instructions be issued to all the District Agricultural

Officers for immediate settlement, in full, of the pending bills of the Aircraft Operators. This note was approved by the Joint Director, Radhakrishnan Reddiar, on 24th September 1971, and a circular was issued in implementation of that note to all the District Agricultural Officers. The directions contained in this circular were applicable only to the bills for the work done till that date (22nd September 1971). It was reiterated in the circular that, in future, the bills of the Operators should be sent to the office of the Director of Agriculture for scrutiny and return.

Prior to the issue of this circular, the District Agricultural Officers were competent, at their own level, to clear such bills for payment to the Operators.

On October 4, 1971, Shri Dharmalingam again took over as Minister for Agriculture. Immediately thereafter, he verbally directed Hari Bhaskar to stop further payments of the pending bills of the Operators.

Some of the Operators, who had not benefited by the orders for releasing payment issued on 22nd September 1971, wanted to know the reason for the stop-payment orders. Consequently, thereafter on October 5, 1971, Cambata and Captain went to Madras to meet Shri Anbil Dharmalingam. Cambata, asked James Fredrick, their local representative, to find out the reason for non-payment of the bills. Fredrick informed Cambata that those Operators, who had not received payment of their bills, had defaulted in payment of the commission. Thereupon, Cambata, Captain and James Fredrick met Shri Anbil Dharmalingam. Cambata informed Shri Dharmalingam they had already paid on 22nd September 1971, over a lakh of rupees as commission, calculated at the rate of 45 paise per acre for the areas covered upto 19th September 1971, as the first instalment to the Chief Minister through his Private Secretary, Vaithialingam. Shri Dharmalingam said that he had been instructed by the Chief Minister to collect the commission himself, from the Operators at the rate of 90 paise per acre. If the commission was not paid at that rate, he threatened to cancel all orders for aerial spraying and stop all payments to the Operators. After a lot of persuasion and pleading by the Operators, Shri Dharmalingam accepted to take into account, the previous payment to the Chief Minister through Vaithialingam, and insisted that the balance at the rate of 45 paise per acre for the area covered by the Operators upto 19th September, 1971 should be paid to him by the 11th October, 1971, positively. Shri Dharmalingam added that H.P. Rao, who was then present along with Cambata, must also pay the second instalment of the commission along with the other Operators on 11th October, 1971, after adjusting Rs. 25,000 that he had paid through Vaithialingam, earlier.

On 11th October, 1971, all the Operators again assembled at the Connemara Hotel, Madras. Krishnan prepared the Master List and calculated the contributions to be made by each Operator for the acreage covered by him up to the 4th October, 1971 (Ex. C.W. 8/23). On the basis of this, Master List 'Ex. C.W. 2/16' was prepared by Cambata, according to which, all the Operators enclosed their contributions, in duly marked, separate envelopes. Rao also made his contribution following the same procedure, on behalf of his Company. The total of the contributions made by all the Operators on this occasion, was Rs. 1,41,650. All these envelopes containing the amounts contributed by the Operators were enclosed in a brief case, together with a copy of the Master List (Ex. C.W. 2/16) prepared by Cambata. Cambata, Captain, Dastoor, Khemka, and Rao then went to the residence of Shri Anbil Dharmalingam, Agriculture Minister. They met the Minister in his room on the first floor of his house. Shri Anbil Dharmalingam was sitting behind a desk. He greeted Cambata and his companions and received the brief case containing the money. He opened the brief case, glanced at the Master List and the envelopes and then smiled at the Operators. Shri Anbil Dharmalingam did not give any voucher in token of the receipt of this money to the Operators. In answer to a request made by the Operators, the Minister said that he would issue orders for payment of their bills forthwith. Cambata reminded Shri Anbil that the Operators had executed a legal contract at his instance with Rajagopal, and that nothing had been done by the Minister to see to the cancellation of that contract. Shri Dharmalingam said "Cambata don't worry. Rajagopal my man. I fix him". The Minister impressed upon the Operators that they should not fail to pay the next instalment of the Commission to him on the 25th October, 1971.

The Operators then returned to the Connemara Hotel. Cambata asked Krishnan to collect the particulars of the acreages covered by the individual operators from the office of the Director of Agriculture, and then forward the collected figures to him. Accordingly, Krishnan, after gathering the necessary information prepared another Master List (Ex. C.W. 2/17) in which the amounts to be contributed towards the payment of the commission by the Operators were worked out on the basis of the acreages covered during the period from 6th August 1971 to 4th October 1971 (Ex. C.W. 2/17). Krishnan sent a carbon copy of this Master List to Cambata, who got more copies of the same typed out and sent to the Operators on 13th October 1971. According to this Master List, (Ex. C.W. 2/17), six Operators, namely: Agricultural Aviation, AV-India, Cambata Aviation, Mahindra and Mahindra, Maneckji Aviation and Pushpaka Aviation, were to pay on this occasion, amounts aggregating Rs. 41,714.55. The remaining two Operators, namely, Khemka Aviation and Sanghi Aviation were not to pay any commission on this occasion as they had not sprayed any area during this period.

As usual, for effecting payment of this amount to the Minister, Shri Anbil Dharmalingam, the Operators assembled at Connemara Hotel, Madras on 25th October 1971. The Operators put their amounts in separate envelopes bearing their names and the amounts enclosed. These envelopes were then made into one bundle and put in a brief case along with the Master List. The brief case was then taken to the residence of Shri Anbil Dharmalingam by Cambata, who was accompanied by Captain, Krishnan and others. Shri Anbil Dharmalingam opened the brief case, examined the contents and then enquired whether the Operators were getting payments of their bills, regularly. The Operators replied in the positive and returned to their Hotel.

The third payment of the commission was made to Shri Dharmalingam on November 6, 1971. Owing to illness Cambata could not come. He authorised the Vice-President R. H. Captain, to do the needful. Captain, Krishnan and other Operators assembled at Connemara Hotel. Krishnan prepared the Master List (Ex. C.W. 2/18). The amounts comprised in this instalment represented the balance of the commission, in respect of the acreage covered during the period from 19th September 1971 to 4th October 1971. The Operators put their contributions in separate envelopes duly marked as before, which were then put in a brief case and taken to the residence of Shri Anbil Dharmalingam. The brief case containing a total amount of Rs. 52,676, together with a copy of the Master List (Ex. C.W. 2/18) was handed over by Captain to Shri Dharmalingam. While receiving the money, Shri Dharmalingam told Captain that Cambata should continue to meet him on such occasions. The date for payment of the fourth instalment was fixed as 25th November 1971.

Before the Operators proceeded to Madras, they received a telegraphic notice (Ex. C.W-8/27), dated 15th November 1971, from the Advocate of Ponnee Enterprises claiming a substantial amount (Rs. 3,38,960) as commission due to them from the Operators. The Operators discussed the receipt of this notice at a meeting of the Association on 24th November 1971. As advised by Cambata, Krishnan had prepared a statement showing the acreages covered by the Members of the Association as on 12th October 1971 and 26th October 1971. He sent this information under cover of a letter, dated 28th October 1971 (Ex.C.W. 3/2), to Cambata by post. On 19th November 1971, Krishnan wrote another letter (Ex. C.W. 3/3) to Cambata giving the acreage done as on 16th November 1971, according to the records of the Director of Agriculture, and the amounts payable by each Operator. According to the letter the total acreage done by the nine Operators as on 16th November 1971, was 6,16,500 acres. There was a statement (Ex. C.W. 2/19) annexed to Krishnan's letter, showing the acreages done and the amounts due from the various Operators as on 25th November 1971. The total amount due for next payment was Rs. 93,733.

On 25th November 1971, Cambata reached Connemara Hotel, Madras. Captain, Dastoor and Rao did not come, nor sent their contributions. As usual, the other Operators or their representatives enclosed their contributions in separate envelopes, duly marked, and handed over the same to Cambata. The consolidated envelopes together with a copy of the Master List were handed over by Cambata to Shri Anbil Dharmalingam at his residence. The total amount payable to the Minister on this occasion was Rs. 93,733, but actually Rs. 53,359 were paid, the shortage being due to non-contribution of their shares by the Operators represented by Captain, Dastoor and Rao. A Master List was prepared by Krishnan, in duplicate, a copy of which was handed over to Shri Dharmalingam, along with the money. Shri Dharmalingam after checking the amount, as usual, thanked them and asked Cambata why Captain, Dastoor and Rao had not paid their shares of the commission. Cambata informed him that Dastoor could not come as he was ill, while Rao and Captain were otherwise occupied. Shri Dharmalingam insisted that they must pay their shares at the next meeting which he fixed for 23rd December 1971.

Krishnan on or about 10th December 1971 collected the necessary data from the Office of Shri Marar, Deputy Director, Plant Protection, and prepared a consolidated statement (Ex. C.W.3/5) showing acreages done as on 30th November 1971, the amount due to be paid by the Operators to the Minister. He sent this statement (Ex. C.W.3/5) to Cambata under cover of his letter, without date, in which he suggested that only the second instalment of previous acreage should be paid on 23rd December 1971, which would mean full payment on acreages done up to 16th November 1971. Obviously, he made this suggestion in view of the fact that he and some other representatives of the Operators had after the receipt of the notice from Ponnee Enterprises, approached Shri Anbil Dharmalingam, requesting him to persuade Rajagopal to withdraw his claim. They reminded the Minister about his promise made to the Operators at the meeting held on 21st July 1971. They found the Ministers's attitude very non-co-operative and unhelpful.

On 13th December 1971, a meeting of the Operators was held in which Krishnan's undated letter (Ex. C.W.3/5) received on the 13th December, 1971, was considered. The Minister wanted an early meeting for payment of the remaining commission. In view of the notice from Rajagopal received on behalf of Ponnee Enterprises, the Operators resolved that they should first watch and try

to deal with the developments that had taken place because of the threatened suit by the Ponnee Enterprises and thereafter to meet the Minister Shri Dharmalingam, with the amounts, payable in respect of the acreages covered up to 16th November 1971, only. Krishnan's suggestion that further payments to the Minister after 23rd December 1971 should cease, was accepted.

In consequence, Cambata sent the telegram (Ex. C.W.8/28), to his local representative, James Frederick, requiring the latter to inform the Minister, Shri Anbil Dharmalingam that Cambata was unable to proceed to Madras due to local situation and requirement of the aircraft by the Defence. By this telegram he also wanted Frederick to convey to the Minister, that the bills of some of the Operators had not been cleared, as assured by him, and that to some member-Operators even previous year's payments were still due from the Department. Cambata further suggested in this telegram that a suitable date be got fixed for meeting the Minister, preferably the 22nd.

On receipt of the intimation regarding the date fixed for the meeting, Cambata, Captain Frederick, Rao, Sanghi and others assembled in Connemara Hotel, Madras on December 23, 1971. By adopting the same procedure as before, the Operators or their representatives put their amounts in marked envelopes and the same were carried in a bundle by Cambata and others to the residence of Shri Anbil Dharmalingam (Minister for Agriculture). Cambata handed over the same along with the Master List. The total amount paid to the Minister on this occasion was Rs. 64,502. While paying this amount they again requested Shri Anbil Dharmalingam to intervene and persuade Rajagopal to withdraw his notice and claim on behalf of Ponnee Enterprises and to arrange early payment of their pending bills. Shri Anbil Dharmalingam promised to help them in this connection.

Subsequently, on December 29, 1971, Rajagopal on behalf of Ponnee Enterprises filed a suit in the High Court at Madras for the recovery of Rs. 3,38,960 against all the Members of the Association who had carried out aerial spraying operations in Tamil Nadu in the year 1971-72. The Director of Agriculture, Tamil Nadu, was also impleaded as a defendant. On January 6, 1972, the plaintiff obtained an interim injunction whereby the Director of Agriculture was restrained from making payment of the pending bills to the Operator defendants.

By this time, the Operators had jointly paid Shri Anbil Dharmalingam on 11th October 1971, 25th October 1971, 6th November 1971, 25th November 1971 and 23rd December 1971, a total amount of Rs. 3,53,901-55. It is in evidence that Rao who had not paid his share amounting to Rs. 17,603 on 25th November 1971, later on separately paid up the same to Shri Anbil Dharmalingam. Similarly, from the consolidated statement (Ex. CW-2/20) seized from the Operators in 1972, prepared by Dastoor, it can be spelled out that Dastoor of Mahindra and Mahindra had also paid later on independently to the Minister, Rs. 16,236 plus Rs. 6 more, towards their share which was payable on 25th November 1971, but had not been then paid. R. H. Captain, however, never paid Rs. 6,535 which was the share of Av-India payable on 25th November 1971. After adding to the figure of Rs. 3,53,901 the amounts separately and independently paid by Rao and Dastoor to the Minister, the total amount alleged to have been paid as commission to the Chief Minister and Shri Anbil Dharmalingam, Minister for Agriculture, in respect of the aerial spraying contracts of the year 1971-72, comes to Rs. 5,30,019. This figure does not include the sum of Rs. 25,000 allegedly received by the Chief Minister on 17th November 1970 from H. P. Rao through Vaithilingam, nor the commission amount relating to the contracts of 1970-71, siphoned through Rajagopal of the Ponnee Agencies by Shri Anbil Dharmalingam.

The break-up of the aforesaid amount of Rs. 5,30,019 is as below—

Payment made to Chief Minister through Vaithilingam by H. P. Rao, on 13th August 1971 and by the other Operators on 22nd September 1971. Rs. 1,42,273.

Payment made to Shri Anbil Dharmalingam by all Operators jointly or severally. Rs. 3,87,746.

AERIAL SPRAYING PROGRAMME IN TAMIL NADU—GENERAL.

For better appreciation of the various questions involved in this case, it would be useful to have a general idea of the financial rules bearing on the subject and the procedure and practice followed in the State of Tamil Nadu regarding the aerial spraying programme. A brief reference has been made earlier to such practice but here the same is set out with elaboration.

As early as 1960, the Government of Tamil Nadu introduced in the State aerial spraying of pesticides as a plant protection measure against pests and disease. Such spraying was done either by aircrafts belonging to the Directorate of Agricultural Aviation, Government of India, or by awarding contracts to private operators, who were on the approved list of the Government of India.

In January 1970, a Centrally sponsored scheme was formulated, according to which, the Central Government agreed to subsidize aerial spraying in the States to the maximum of Rs. 7 per acre. In a circular letter to the Agricultural Secretaries of all the State Governments, the Government of India informed that it would reimburse cost of aerial spraying incurred by the State Government, in full, up to a ceiling of Rs. 7 per acre. The cost of pesticides, air-strips, lay-out, etc., was to be met by the State Government, who would, if they so considered recover either the whole or part of this cost from the cultivators.

The practice followed in the Department of Agriculture of the State of Tamil Nadu every year for aerial spraying programme was as below—

Every year a target for aerial spraying programme was fixed in each Agricultural District, in respect of each crop, viz., paddy, ground-nut and cotton. The District Agricultural Officer was responsible for achieving that target. The District Agricultural Officers, in consultation, with the Crop Development Officers, used to conduct meetings in their respective Blocks and the Panchayat Circles and explain to the farmers the benefit of aerial spraying programme and the probable cost that would be charged from the farmers, over and above the subsidy of the Government. The Panchayat Unions would pass necessary resolutions requesting the Department of Agriculture to undertake aerial spraying in the areas comprised in the territorial jurisdiction of those Panchayats. They also undertook to pay the aerial spraying charges under Section 119(3) of the Madras Panchayats Act, 1958. The District Agricultural Officers would consolidate the proposals in respect of their Division after inspection of the areas proposed to be sprayed and satisfying themselves that those areas were free from obstructions for undertaking aerial spraying.

All such proposals received from the District Agricultural Officers were consolidated at the Directorate of Agriculture and financial implications were worked out. Before submitting the proposals to the State Government for sanction, a meeting of the District Officers was convened at the Directorate and the problems, if any, in implementing the programme were discussed in detail. Thereafter, the sanction of the Government to implement the programme was obtained.

The Directorate of Agricultural Aviation, New Delhi, communicated the list of approved Aircraft Operators, who were authorised by the Directorate to undertake aerial spraying. The particulars of the fleet-strength of each Aircraft Operator concerned were also furnished by the Directorate to the State Government. Necessary tender notification inviting quotations for hire charges of aircrafts for aerial spraying in a particular agricultural year was published in the leading Dailies, ordinarily in the month of April. The tenders were then opened by the officers in the Directorate of Agriculture. Whenever required negotiations were made with the aircraft Operators submitting the tenders, to explore the possibility of reducing the rate down or to award a uniform rate to all the Operators who were to be allocated acreages for aerial spraying. After settling the rates and finalising the terms, orders were issued with regard to the acceptance of the particular aircraft Operator for undertaking the aerial spraying work in the State. Based on the strength of the each fleet concerned, areas for spraying work were allocated and divided among the aircraft Operators keeping in view the fleet-strength of each operator. The time schedule of spraying was, as drawn up by the District Agricultural Officer, communicated to the Operator. The District Agricultural Officers would inform the Operators well in advance to position their aircrafts.

The Operators, whose tenders were accepted, or with whom the rates and terms were settled by negotiation, were required to execute, in duplicate, formal contracts. The procedure was that the Operators used to deliver contracts/agreements duly signed and executed by them, to the Director of Agriculture. The Director, thereafter, used to execute those contracts/agreements on behalf of the Government and return one copy of such completed agreement. On such execution of the contract, the Operator was required to deposit a sum of Rs. 5,000 as security, which was refundable on satisfactory completion of the work.

There is some discrepancy with regard to the actual practice followed by the Agriculture Department of the Government of Tamil Nadu in the matter of awarding spraying contracts to Aviation Companies from year to year. In 1966-67, 1968-69 and 1969-70 tenders were invited by the Director of Agriculture, and rates as well as the acreages to be covered by the individual aircraft Operators were finalised by him. Government sanction, however, was obtained each year for the Implementation of the scheme as a whole. In 1969-70, however, the Director of Agriculture had allotted the entire areas in the State to one Aircraft Company for aerial spraying at the rate of Rs. 5.98 per acre. Subsequently, the State Government decided to allot this work to five Companies at the uniform rate of Rs. 5.98 per acre. This decision was taken by the Government at the Cabinet level. In 1970-71, however, the original decision in the relevant office file to allot 1.5 lakh acres to Pushpaka Aviation Pvt. Ltd., at Rs. 8 per acre, and 8.5 lakh acres to the other Operators at the rate of Rs. 9 per acre, appears to have been taken by the Director of Agriculture. The subsequent decision to cancel the allotment of 1.5 lakh acres to Pushpaka Aviation

Pvt. Ltd., and to re-allot the entire 10 lakh acres to nine Operators at the rate of Rs. 9 per acre was taken by the Chief Minister and the Minister for Agriculture. The further decision to re-allot 1.5 lakh acres to Pushpaka Aviation at the rate of Rs. 9 per acre was also taken by the Chief Minister. In 1971-72, the rate of Rs. 11 per acre, including Re. 1 for flagging, etc., was approved by the Chief Minister as well as the Minister for Agriculture.

In view of this confusing picture, the Commission sought information through Shri B. Vijayaraghavan, Officer on Special Duty (OSD), Public Department, Government of Tamil Nadu, from the Agricultural Department with regard to these points:

(a) Whether the Director of Agriculture was competent to award contracts to Aviation Companies after calling tenders ?

(b) Whether there were any Government Orders specifying that such contracts should be finalised only at the Government level, and, if so, the date on which such Orders came into force ?

The Department of Agriculture clarified that the Director of Agriculture was not competent as per the Madras Financial Code, to finalise rates and award contracts for aerial spraying of pesticides. The matter, therefore, had to be referred to the Government, from time to time. There were no Orders of the Government delegating powers to the Director of Agriculture for finalising contracts, under the aerial spraying programme at his level, only. This is also confirmed by Shri Hari Bhaskar (C.W.9) and Shri Vedanarayanan (C.W.7) in their deposition and by Shri Ramachandra Marar, the then Joint Director of Agriculture in his affidavit. Shri Hari Bhaskar (C.W.9) has testified :

"in the case of aerial spraying work, the practice of the office was to get the approval of the Government to the award of such Contracts. Normally, we referred all the proposals after opening the tenders to the Government Secretariat for approval. The approval of the Government used to be conveyed by the Secretary for Agriculture."

According to Shri Vedanarayanan (C.W.7).

"The Director of Agriculture initiated proposals for coverage order for aerial spraying and submitted for Government orders with regard to the area as well as the rates for such work. He had no powers to award such contracts at his level. It was necessary to take the approval of the Minister for Agriculture and the Chief Minister for this purpose."

Shri Marar, then Joint Director of Agriculture, in his affidavit, has deposed :

"It is the Government who has to approve the rates and the allocation of areas would be made by the Director of Agriculture. The payment of bills of the operators would be done by the District Agriculture Officers."

Shrimathi Sathyavani Muthu, the then Minister for Agriculture, has testified :

"I state that in Tamil Nadu, Government, decisions in all important contracts and policies were taken by the concerned Minister and approved by the Chief Minister. Similarly, in the case of aerial spraying contracts, the Agriculture Minister was to take the decision and mark the file to the C.M."

The Madras Financial Code as revised in the Sixth Edition which was published in November 1972, contains Financial Rules currently in force in the State of Tamil Nadu for ensuring that revenue is collected properly, financial powers of various administrative authorities are exercised in accordance with their delegated financial powers, rules for inviting tenders for works, for purchase of stores, etc. The sixth Edition incorporates all corrections and amendments issued up to 31st March 1971.

The general principles to be followed by any Government servant in incurring any item of expenditure from public funds have been laid down in Article 3 of the Code. These are :

(a) Expenditure must have been sanctioned by a general or special order of the authority competent to sanction such expenditure.

(b) Sufficient monies have been provided for the expenditure in the Appropriation Account for the current financial year or by reappropriation of funds sanctioned by the competent authority.

(c) The expenditure should not be *prima facie* more than the occasion demands. Every Government servant is expected to exercise the same diligence and care in respect of expenditure in public monies under his control as a person of ordinary prudence would exercise in respect of the expenditure of his own money.

(d) It is the duty of every Government servant not merely to observe complete integrity in financial matters, but also to be constantly watchful to see that every kind of wasteful expenditure from public funds is scrupulously guarded against.

(e) The Government servant will be personally responsible for any loss that may be found to be due to any neglect of duties laid upon him by the provisions of the Code. The fact that a Government servant has been misled or deceived by a subordinate, will in no way mitigate his personal responsibility, since every Government servant should be familiar with the financial rules and exercise specially strict close control over his subordinates with regard to the use of public funds.

The Madras Financial Code has laid down these rules with regard to acceptance of tenders :

(i) Under Article 127, if other conditions are equal, the lowest tender should be accepted, and when the lowest tender is not accepted, the reason should be recorded and all the relevant records made available to the Accountant-General during his local inspection of the account of the disbursing officers.

(ii) No work which is to be executed under contract should be started unless the contractor has signed a formal written agreement (Article 166).

(iii) A Government servant who starts any work without a written order from a higher authority and a Government servant who issues a written order to start a work otherwise than in accordance with the rules, will be liable to be held personally responsible for paying for the work done, if it is found that his action was not fully justified by very exceptional circumstances. The Head of the Department should report to Government any failure to comply with the rules regarding works that call for disciplinary action by Government. The Government will take disciplinary action against any Government servant administrative or executive who fails or delays to comply with these orders (Article 169).

(iv) When other conditions are equal, the Government servant who has to select a tender for acceptance, should accept the lowest tender. If he accepts a tender other than the lowest, he should keep a confidential record of his reasons for doing so and should produce this record for perusal before the Accountant-General or other inspecting officers.

The Finance Department of the State Government of Tamil Nadu has prepared a Ready Reckoner for facilitating determination of the financial procedure to be followed in individual cases of sanctions issued in the Secretariat. The Ready Reckoner issued on 27th June 1970, was in force during 1970-71 and 1971-72. At page 5 of this Ready Reckoner, the procedure to be followed as far as financial sanction for works is concerned has been laid down. Since the work of Aerial Spraying involved an expenditure of over Rs. 1 lakh, it is covered by Sl. No. 5, and according to the prescribed procedure, the scheme, before sanction, has to be circulated to the Minister concerned, Minister for Finance and also referred to the Cabinet. In the remarks column, however, it has been mentioned that any scheme which is not a "new service" and the cost of which is wholly recoverable from any Government, local body or individual, may be sanctioned by the administrative department concerned, without circulation to the Minister of Finance unless the Finance Department specifically asks for it.

During the year 1969-70, hire charges for aerial spraying were fixed by the Tamil Nadu Government at Rs. 5.98 per acre. That it was not a workable rate, would be clear from the affidavit of C.P. Khemka of Khemka Aviation Pvt. Ltd., one of the Operators, who undertook aerial spraying. Khemka has stated :

"....The Tamil Nadu Government took full advantage of this cut throat competition.... On actual working it was found that it resulted in heavy loss to all the operators due to various causes, viz., the low uneconomic rates, the area offered being much less than that originally planned, etc."

Operators form an Association.

In view of this experience and in order to avoid cut-throat competition and to turn out and do economically maximum amount of aerial spraying work by co-ordinated fleet resources of the industry, in April 1970, the Aerial Spraying Companies, whose names were borne out on the

approved list maintained by the Chief Director, Government of India, formed themselves into an association, under the name and style of 'Indian Agricultural Aviation Association'. By April 1970, it had nine members, namely:

1. Agricultural Aviation Private Limited.
2. AV India Private Limited.
3. Cambata Aviation Private Limited.
4. Khemka Aviation Private Limited.
5. Maneckji Aviation Private Limited.
6. Mahindra and Mahindra Private Limited (Aviation Department).
7. Helicopter Services (P) Limited.
8. H. S. Shoba Singh and Sons (P) Limited, and
9. Sanghi Aviation (P) Limited.

Later on, in 1971 Pushpaka Aviation (P) Limited also became its member.

J. R. Modi was the first President of the Association. R. S. Cambata became its President from 25th May 1970.

Evidence.

The investigating officers whose services have been utilised under s. 5-A of the Commission of Inquiry Act have examined in respect of this Allegation, 32 witnesses in addition to the collection of voluminous documentary evidence. Fifteen persons mentioned below, had filed affidavits in response to the notices/notification issued by the Commission under Rule 5(2):

1. Shri V. Rajagopal
2. Shri R. Desikan *alias* Babu.
3. Shri N. Jayaraman.
4. Shri C. P. Khemka, Managing Director of Khemka Aviation (P) Ltd.
5. Shri J. R. Modi, Managing Director, Helicopter Services (P) Ltd.
6. Shri R. H. Captain, Managing Director, Av-India (P) Ltd.
7. Shri K. N. A. Krishnan, Director, Agricultural Aviation (P) Ltd.
8. Shri H. P. Rao, Managing Director, Pushpaka Aviation (P) Ltd.
9. Shri K. J. Maneckji, Director, Maneckji Aviation (P) Ltd.
10. Shri J. K. Maneckji, Director, Maneckji Aviation (P) Ltd.
11. Shri Surésh Kumar Sanghi, Chairman, Sanghi Aviation (P) Ltd.
12. Shri Surjit Singh Bubber, Director, H. S. Shoba Singh and Sons (P) Ltd.
13. Shri N. Hari Bhaskar, former Director of Agriculture, Tamil Nadu.
14. Shri P. N. Vedanarayanan, former Secretary, Agriculture, Tamil Nadu.
15. Shri M. Vaithialingam, former Private Secretary to the Chief Minister, Shri M. Karunanidhi.

Sarvashri M. G. Ramachandran and M. Kalyanasundaram also filed affidavits before the Commission.

Copies of all the affidavits/statements filed by the various persons were given to the Respondents, including Sarvashri M. Karunanidhi and Anbil Dharmalingam. After obtaining repeated extensions of time, the Respondents Sarvashri M. Karunanidhi and Anbil Dharmalingam, on September 20, 1976, filed their counter-affidavits, *inter alia*, with regard to Allegation 11(b), in which they denied the allegations made against them in the aforesaid affidavits/statements, characterising them to be false.

Evidence of 18 more persons who had been examined by the investigating officers under Section 5-A, was taken on affidavits as per my order, dated September 20, 1976, and of two more as per orders of subsequent date. They are :

18. Shri V. V. Badami, Commissioner of Income-Tax, Madras.
19. Srimathi N. D. Mahalakshmi, w/o Shri K. L. Balaganapati.
20. Shri V. S. Ramaswamy, Retired Superintending Engineer, P.W.D.
21. Shri N. Ramachandran of CIBA.

22. Shri P. V. Viswanath, Manager of Messrs Khemka Group of Companies.
23. Shri T. R. Vijayaraghavan, Sales Promotion Officer, Agricultural Aviation (P) Ltd.
24. Shri Pat Dimney, Field Officer, Maneckji Aviation (P) Ltd.
25. Shri T. R. Ramaswamy, Representative of Sanghi Aviation (P) Ltd.
26. Shri P. Karuppanan, District Agricultural Officer.
27. Shri M. M. Chandrahasan, Gazetted P. A. to Shri Anbil Dharmalingam.
28. Shri K. V. Subramaniam, Employee, Motor Vehicle Section, Civil Secretariat, Madras.
29. Shri S. Nazir Ahmed, at the relevant time Section Officer, Motor Vehicle Section, Civil Secretariat, Madras.
30. Shri V. Subbiah, Supervisor, Abdul Cader and Co.
31. Shri Lalit Khanna, Chartered Accountant, Messrs Maneckji Aviation (P) Ltd.
32. Shri P. Ramachandra Marar, Joint Director, Agriculture, Tamil Nadu.
33. Shrimati Sathyavanimuthu, former Agriculture Minister, Government of Tamil Nadu.
34. Shri K. Diraviam, IAS, former Secretary, Agriculture, Government of Tamil Nadu.
35. Shri James Frederick, Representative of Messrs Cambata Aviation (P) Ltd.
36. Shri R. P. Kapur, Deputy Superintendent of Police.
37. Shri E. P. Royappa, former Chief Secretary, Government of Tamil Nadu.

Copies of all these 20 affidavits, also, were sent to the Respondents and they were given adequate opportunity to rebut or reply to the averments therein by filing their affidavits in opposition and those of their witnesses. Despite extension of time granted for the purpose, the Respondents have not availed of this opportunity. I also recorded the evidence of these ten witnesses by oral examination :

- (CW-1) Shri V. Rajagopal.
- (CW-2) Shri R. H. Captain.
- (CW-3) Shri K. N. A. Krishnan
- (CW-4) Shri S. A. Ramachandran.
- (CW-5) Shri H. P. Rao.
- (CW-6) Shri M. Vaithialingam.
- (CW-7) Shri P. N. Vedanarayanan.
- (CW-8) Shri R. S. Cambata.
- (CW-9) Shri N. Hari Bhaskar
- (CW-10) Shri K. A. Rajagopalan.

Out of these, S. A. Ramachandran, had not filed any affidavit, although he was examined by the investigating officer under Section 5A, R. S. Cambata, also, did not file any affidavit, although he had sent an unsworn statement from England where he has been residing for the last 2-3 years. The investigating officer, for the same reason, could not examine this witness under Section 5A. Shri K. A. Rajagopalan, Superintendent of Police, is the officer, who was in-charge of the C.B.I. team, whose services were utilised by the Commission, under Section 5A.

It may be recalled that on the 11th September 1976, the Respondents had submitted a list of witnesses which was elaborated by them on the 13th September 1976, whom they wanted the Commission to call for oral examination. By my order dated, 11th September 1976, made in the presence of the Counsel for the Respondents and the Central and State Governments, I had directed that six persons (who figure prominently in that list of witnesses) be called in the first batch for oral examination and the question of calling the remaining persons in that list, was deferred till after the examination of the witnesses already summoned. On September 20, 1976, when the Respondents intimated their decision not to participate in the proceedings before the Commission, V. Rajagopal, the first of these summoned witnesses, was present, and his evidence commenced on that day. Copy of the orders summoning Sarvashri Vaithialingam, Vedanarayanan and Hari Bhaskar was also served on the Respondents, and they were invited to exercise their right of cross-examining these witnesses. Despite the ample opportunity afforded to them, they deliberately did not cross-examine these witnesses. Even so, I or my Counsel put all those questions—to the witnesses which were suggested by the objections raised or pleas taken in the counter-affidavits of the Respondents. Many more questions were put to them in a searching, probing and pointed manner to test their veracity.

To their own affidavits, Shri M. G. Ramachandran and Shri V. V. Badami have annexed the affidavits of Shri P. Kanan and the Income-Tax Officer, Shri A. K. Suryanarayanan, respectively, from whom, they are said to have derived the information adumbrated in their affidavits.

Thus, apart from the counter-affidavits of the Respondents and the documentary evidence, there is before me in respect of Allegation 11(b), the sworn evidence of 35 persons (who may be referred hereafter by their serial numbers in the above list or by the number, if any, assigned to them at the time of their examination before the Commission).

V. Rajagopal, CW-1, is the Chief witness with regard to the Commission collected from the Operators by the Ponnee Agencies, and shared with him by Shri Anbil Dharmalingam, as a reward or consideration for procuring for the Operators, aerial spraying contracts of 1970-71, by the exercise of Shri Anbil's personal influence with the Chief Minister, Shri M. Karunanidhi, and the public servants concerned. Rajagopal has testified how at the instance and with the prior consultation of Shri Anbil Dharmalingam at every step, he negotiated an arrangement (Ex-CW1/4, dated 29th May 1970), with the Operators, through their representative, C. P. Khemka of Khemka Aviation (P) Ltd., according to which, the Operators were bound to pay to Ponnee Agencies—which had been floated by Rajagopal under the advice of Shri Anbil Dharmalingam—Commission at the rate of 40 paise per acre; and how 66 per cent of that Commission collected from the Operators, was to be shared equally by the witness and Shri Anbil Dharmalingam, the latter's share being secured and concealed by the induction of a 'dummy' partner, Smt. Mahalakshmi; and how out of the advance commission collected from the Operators, the witness on 1st July 1970, paid a sum of Rs. 20,000 in cash to Shri Anbil Dharmalingam towards his share of the commission; and how subsequently, from time to time, in the year 1970, the witness paid amounts, aggregating Rs. 40,000 to Shri Anbil Dharmalingam towards his share of the commission, besides incurring an expenditure of about Rs. 20,000 on the election campaign of Shri Anbil Dharmalingam. Rajagopal has further deposed how under the instructions of and in concert with Shri Anbil Dharmalingam, the witness on April 10, 1971, floated Ponnee Enterprises (Ex-CW-1/7) and how thereafter, Shri Anbil Dharmalingam at first, by negotiations made through and in concert with the witness, and later on by holding direct talks with the Operators, arrived at a new arrangement (Ex. CW-2/6) on July 2, 1971 where by the Operators were made to agree to pay Commission at 80 paise per acre to Ponnee Enterprises as a reward for getting aerial spraying contracts for 1971-72 at the rate of Rs. 11 per acre, and how under that arrangement the bulk of the Commission thus collected from the Operators, was to be paid to Shri Anbil Dharmalingam and a slice thereof, not exceeding 20 per cent to the witness. He has further stated that this arrangement (Ex. CW-2/6), was not acted upon; consequently, towards the end of December 1972, the witness on behalf of Ponnee Enterprises, filed a suit for the recovery of Rs. 3 lakhs and odd as arrears of commission, against the Operators, and that Suit was disposed of on the basis of a settlement made out of Court with the Operators. In short, the witness has, so far as his role is concerned, substantially narrated the same story, frankly and fully, in the witness-box, which has been set out above.

V. S. Ramaswamy, No. 20, is the Superintending Engineer who had introduced Rajagopal to Desikan, No. 2, and Jayaraman, No. 3, who in turn, introduced him to N. Ramachandran No. 21 and Seshadri of CIBA, and through them, later, Rajagopal got introduced to C. P. Khemka No. 4.

C. P. Khemka, No. 4, Cambata, CW-8, H. P. Rao, CW-5, R. H. Captain, CW-2, Krishnan, CW-3, K. J. Maneckji, No. 9, J. K. Maneckji, No. 10, Suresh Kumar Sanghi, No. 11, J. R. Modi, No. 5 and S. S. Bubber No. 12, are the Operators, being Managing Directors/Directors of the Aviation Companies which were concerned throughout or at some stage with the aerial spraying in Tamil Nadu in the years 1970-71 and 1971-72.

S. A. Ramachandran, CW-4, Pat Dimney, No. 24 and James Frederick, No. 35 were the local representatives or employees of the Operators.

C. P. Khemka, No. 4 (*vide* affidavit, Sl. No. 15, dated 12th July 1976 and his statement, dated 13th August 1976, recorded under Section 5A, stated how he, on being authorised by the Association, negotiated on behalf of himself and the other Operators, an Agreement (CW-1/4) with Rajagopal, CW-1, of Ponnee Agencies, who was to help them in getting the aerial spraying contracts. They agreed to pay 40 paise per acre commission to Rajagopal through Ponnee Agencies, only when they were convinced that Rajagopal was, through the influence of his close friend, Shri Anbil Dharmalingam, capable of securing for them, and did, infact, secure for them, aerial spraying contracts at the rate of Rs. 9 per acre in the year 1970-71. C.P. Khemka has stated that he was one of the Operators who went to the residence of the Minister, Shri Dharmalingam on 2nd July 1971. He waited till 3.00 p.m. and on being told that the meeting would be delayed, left as he had other urgent work. Later, he was informed by a member of the Association on the phone that the Minister had agreed to the rate of Rs. 11. Khemka has also stated that he contributed Rs. 10,720 towards the collective payment made to Vaithialingam for the Chief Minister, through Cambata, on 22nd September 1971. He also speaks about the payment made to Shri Dharmalingam, collectively, by the Operators on 11th October 1971, 25th November 1971 and 23rd December 1971. According to the witness, he had contributed on behalf of his Company Rs. 10,720, Rs. 10,720, Rs. 3,484 and Rs. 3,484 towards the said collective payments made on

22nd September 1971, 11th October 1971, 25th November 1971 and 23rd December 1971, respectively, by the Operators. The witness deposed that the total amount of the contributions made by him towards the collective payments made to Vaithialingam for the Chief Minister, and to the Minister, Shri Dharmalingam, on behalf of Khemka Aviation (P) Ltd., was Rs. 28,408.

H. P. Rao, CW-5, has *inter alia* testified (*vide* his deposition-cum-affidavit.), how he was induced to pay a gratification of Rs. 25,000 in cash, on 17th November 1970, to the Chief Minister, Shri M. Karunanidhi, through his Private Secretary, Shri M. Vaithialingam, as a condition precedent for the award of aerial spraying work in respect of an area of 1.5 lakh acres in Tamil Nadu, at the rate of Rs. 9 per acre. According to him, he had withdrawn this amount of Rs. 25,000 by a cheque, dated 16th November 1970, from the First National City Bank, Madras. H. P. Rao has further stated how about the second week of May 1971, at a meeting with the Agriculture Minister, Shri Anbil Dharmalingam, arranged by Rajagopal, he (Rao) canvassed on behalf of all the Operators for securing aerial spraying work during 1971-72, at the rate of Rs. 11 per acre, and found the Minister's attitude agreeable, who promised to convey his decision 2 or 3 days later through Rajagopal, after consulting the Chief Minister, Shri Karunanidhi; and how the witness along with Cambata, Captain, and some other Operators met the Minister of Agriculture on 2nd July 1971, at which meeting Shri Dharmalingam himself confirmed that Rajagopal had been acting on his behalf, and told the Operators that the contracts would be given to them at Rs. 11 per acre, provided they paid commission as asked for by Rajagopal. Rao has further stated how the Operators were subjected to pressure tactics, as a result of which, he was forced to pay, separately, a sum of Rs. 25,000 in cash on 13th August 1971 to the Chief Minister, Shri Karunanidhi, through Vaithialingam, and that thereafter, he contributed the share of his Company towards the payments which were collectively made by the Operators on 11th October 1971, 25th October 1971, 6th November 1971 and 23rd December 1971 to the Minister, Shri Anbil Dharmalingam in the presence of the witness. He has clarified that he could not owing to financial difficulties, arrange to contribute his Company's share in the payment made to Shri Anbil Dharmalingam on 25th November 1971, by all the Operators, collectively. He has added that subsequently, a week thereafter, he arranged to pay individually to the Minister a sum of Rs. 11,000. Rao has also testified how the Minister, Shri Anbil Dharmalingam had first forced them to agree to pay commission at the rate of 80 paise per acre and execute an agreement to that effect with Ponnee Enterprises and how subsequently, he went back on that arrangement and started demanding commission at Re. 1 or at least at the rate of 90 paise per acre, payable through an agent other than Rajagopal or his Ponnee Enterprises, and ultimately forced the Operators to pay the same at the rate of 90 paise in advance by splitting up the commission thus payable in respect of acreage covered during a particular period, into two instalments calculated at the rate of 45 paise per acre.

Cambata, CW-8, and Captain, CW-2, are the most important witnesses with regard to the commissions extracted from the Operators in respect of the contracts of 1971-72. These two witnesses were the material time, the President and Vice-President respectively, of the Operators' Association. Being the President, Cambata was concerned with all the important events relevant to this Allegation. In his statement before the Commission he has fully recounted all those events. He has testified that on the basis of information received from C. P. Khemka and others, the Operators were convinced about Rajagopal's credentials as Shri Anbil Dharmalingam's man and the latter's capacity to procure for them the contracts at Rs. 9 per acre by the exercise of his influence with the Chief Minister, and consequently they agreed to pay commission to Ponnee Agencies at the rate of 40 paise per acre, and that in May 1970, when they were assured of getting contracts at the rate of Rs. 9 per acre, the witness paid Rs. 15,600 by cheque towards the advance commission calculated at 12 paise per acre, falling to the share of his Company, to Rajagopal. He has also spoken to the notice received by him from the Director of Agriculture about the meeting convened by Srimathi Muthu for reduction of the contract rate, and the assurance conveyed by C. P. Khemka about Rajagopal's capacity to get that complication resolved through his friend's influence with the Chief Minister. He has further testified how, after Shri Anbil Dharmalingam became Minister for Agriculture in March 1971, Rajagopal started negotiations on behalf of his friend, Shri Anbil Dharmalingam, demanding commission at the rate of Re. 1 per acre as a consideration for getting contracts to the Operators at the rate of Rs. 11 per acre, and how H. P. Rao after meeting the Minister with the help and in the presence of Rajagopal, recommended that Rajagopal should be re-appointed as agent for 1971-72, and how Rajagopal on July 2, 1971, arranged a meeting of the witness and the representatives of some other Operators (Captain, Rao and James Frederick) with the Minister, Shri Anbil Dharmalingam, who demanded commission as a consideration for awarding them contracts of 1971-72 at the rate of Rs. 11 per acre, and further confirmed that Rajagopal was his mouthpiece; and consequently, the Operators should sign the Agreement to pay commission to Rajagopal's Ponnee Enterprises forthwith and how thereupon all the Operators on the same day signed the Agreement (Ex.CW-1/14) to pay the commission at 80 paise per acre to Ponnee Enterprises. Cambata has further stated that despite this arrangement to pay commission at 80 paise per acre, which was arrived at the instance of the Minister, the latter sent for the witness and others Operators to have further discussions with him. Witness was unwell, he sent the Vice-President, Captain, to represent him at the meeting

with the Minister convened for the 19th July 1971. On 20th July, P. G. Dastoor informed him on telephone, that the Minister was then asking for enhanced commission at 90 paise per acre, and desired that Rajagopal should be eliminated and the enhanced commission should be paid through another agent to be nominated by the Minister. Dastoor asked the witness to come down to Madras. Cambata has then deposed to his meeting along with Captain and Dastoor, with the Minister on July 21, 1971 and how the witness pleaded their inability to pay commission at enhanced rate to two persons and expressed an apprehension that Rajagopal who had a legal contract signed by the Operators, might get them into trouble, and how thereupon the Minister assured them that they should not worry on that score and that he would take care of Rajagopal who was his own man. This talk took place in the presence of Vedanarayanan who after the meeting, informed them that the Minister desired the commission to be paid in advance to the agent who would be nominated by the Minister. Cambata replied that it was possible for the Operators to agree to this proposal. Cambata has further deposed to his urgent meeting with Vedanarayanan in the first week of August, 1971 in which Cambata was asked to give a personal guarantee for payment of the advance commission by all the members of the Association, and the proposal put by the witness regarding payment of 10 per cent of the bills of the Operators directly to the Association. The witness has further stated how the Operators were first asked to commence work on the basis of work allocation orders in which the contract rate was not specified; nor were they given any copy of the signed contract deeds, and thereupon he sent a telegram (Ex CW-7/7) seeking a meeting of the Operators with the Minister for the 13th September. He has further testified as to his meeting with the new Agriculture Minister, Shri Shanmugham, and with Vedanarayanan and then with Vaithialingam on 18th September 1971, and how Vaithialingam firmly told the witness and his companions that the Chief Minister desired that they should pay commission at 90 paise per acre in advance, without vouchers, off the record, directly to him (Vaithialingam), and how after a good deal of pleading by them, Vaithialingam directed them to return on the 22nd September 1971 with cash representing commission calculated at the rate of 45 paise per acre in respect of the acres covered upto 19th September 1971, failing which further aerial spraying programme would be cancelled.

Cambata has stated that thereafter contributions were made by the Operators or their representatives of their respective shares of the commission and the pooled amount, totalling Rs. 1,17,273, was paid by him along with his companions, Captain and H.P. Rao, to Vaithialingam for transmission to the Chief Minister. Witness has pointedly stated that immediately after the payment, he had seen Vaithialingam leaving his residence in a car, along with the brief case.

Cambata, CW-8, has given direct evidence with regard to the collective payments made by the Operators, through him, on 11th October 1971, 25th October 1971, 25th November 1971 and 23rd December 1971 to the Minister, Shri Anbil Dharmalingam at his residence. He could not come personally to make the collective payment on 6th November 1971, owing to indisposition. He sent his contribution towards that payment through R. H. Captain and also authorised him to act for the President of the Association. Cambata has stated that R. H. Captain did not come to Madras and join in making the collective payment on 25th November 1971. Nor does he speak about Dastoor's coming on that date.

The Evidence of R. H. Captain, CW 2, is substantially the same as that of Cambata, excepting that he does not depose to the making of any payment on 25th November 1971, nor about his going to Madras on that date. Captain has given direct evidence with regard to the payment made to Vaithialingam for the Chief Minister on 22nd September 1971, and those made to Shri Anbil Dharmalingam on 11th October 1971, 25th October 1971, 6th November 1971 and 23rd December 1971, and also about the contributions made by him towards these payments on behalf of his company.

Pat Dimney (*vide* his affidavit) has also given direct evidence with regard to the payments made to Shri Anbil Dharmalingam by the Operators on 11th October 1971, 25th October 1971, 6th November 1971, 25th November 1971 and 23rd December 1971 and also about the Contributions made by his Company (Maneckji Aviation) towards these payments, and the payment made earlier on 22nd September 1971 to Vaithialingam for the Chief Minister.

James Fredrick, No. 35, has also given direct evidence of the payment made to Shri Anbil Dharmalingam on 11th October 1971.

Suresh Sanghi, No. 11 (*vide* his affidavit) has given direct evidence with regard to the payment made to Shri Anbil Dharmalingam on 11th October 1971, and has also stated about the sums contributed by his Company towards the payments made on 22nd September 1971 to Vaithialingam and on 11th October 1971, 25th November 1971 and 23rd December 1971 to Shri Dharmalingam.

P. G. Dastoor has not given any statement. But there is documentary evidence which was contemporaneously prepared which shows the contributions made by his Company (Mahindra and Mahindra) towards these payments of "commission".

Krishnan, CW-3, has given an eye-witness account of the payments made to Shri Anbil Dharmalingam on 11th October 1971, 25th October 1971, 6th November 1971 and 25th November 1971. He also speaks of the contributions made by him towards the payments made on 22nd September 1971 and 25th November 1971 by his Company (Agricultural Aviation). What is more important is that he is the person who generally collected the necessary facts and figures about the acreages covered by the various Operators from the Director of Agriculture's Office and passed on the same to the President of the Association, on the basis of which Master Lists were prepared showing contributions to be made by the individual Operators towards a particular collective payment. One copy of such Master Lists was generally handed over together with the payment to the payee, other copies being preserved for their own record by the Operators. Such copies were seized along with the other records of these Operators in 1972 and were procured therefrom, first, by Shri R. P. Kapur, D.S.P. and from him by the Investigating agency assisting the Commission under Section. 5A.

The evidence rendered by S. A. Ramachandran, CW-6, is of a corroborative nature. He was in close touch with all these developments including the demands made for the commission and its payments. He contemporaneously with the events, used to convey such information to his Principal, J. R. Mody at Bombay. Those telling letters or their copies are on record.

In their affidavits, K. J. Maneckji, No. 9, and J. K. Maneckji, No. 10, have spoken about the contributions made by their company towards the aforesaid payments made on 22nd September 1971, 11th October 1971, 25th October 1971, 6th November 1971, 25th November 1971 and 23rd December 1971.

Vaithialingam, CW-6, the then Private Secretary to the Chief Minister, Shri M. Karunanidhi, appears to have come forward with a full disclosure of all the relevant facts within his knowledge concerning the demand, collection or receipt of this gratification or commission. He has testified how through him, Shri Karunanidhi conveyed instructions to coerce the Operators to pay gratification to him and how he was instructed to induce H. P. Rao, to pay a gratification of Rs. 25,000 to the Chief Minister, through him on 17th November 1970, as a consideration for allotting him aerial spraying work at the rate of Rs. 9 per acre for an acreage of 1.5 lakhs. He has further deposed how under his advice, H. P. Rao paid through the witness on 13th August 1971, another sum of Rs. 25,000 to the Chief Minister and how immediately thereupon, instructions from the Chief Minister for immediate payment of the bills of Pushpaka Aviation and delivery of the signed contract deed to that concern, were communicated to the Director of Agriculture and the Secretary, Agriculture. He has also deposed to the meetings of the Operators with him on 19th September 1971 and again on 20th September 1971 and his communicating to the Operators the desire of the Chief Minister that the Operators should pay 90 paise per acre as commission, in advance, for the acreages covered up to the 19th September 1971, and how after discussion the Operators agreed to pay the same in two equal instalments calculated at 45 paise per acre, and how in compliance with this demand, Cambata and Captain made to the witness, on 22nd September 1971, the collective payment of Rs. 1,17,273 which was immediately thereafter passed on by the witness to the Chief Minister, Shri Karunanidhi, at the latter's residence. Vaithialingam has stated that in or about the second week of November, 1970, he had informed Vedanarayanan that the Chief Minister had agreed to accept Rs. 25,000 from H. P. Rao and that he should put up the revised note as desired by the Chief Minister.

Vedanarayanan (CW-7), who was the Secretary, Agriculture, at the relevant time, has testified that in the second week of November, 1970, in compliance with the orders, dated 10th November 1970, of the Chief Minister, requiring the witness to speak to him, he went to the Chief Minister, and argued for acceptance of the proposal that Pushpaka Aviation should be persuaded to do aerial spraying from helicopter at the rate of Rs. 8 per acre since this was the rate tendered by that Company, but the Chief Minister was not happy at this argumentative attitude of the witness, and summarily directed the witness to put up a revised note to him, proposing that Pushpaka Aviation (P) Ltd. be allotted an acreage of 1.5 lakhs to be sprayed at the rate of Rs. 9 per acre. Witness thought what the Chief Minister was directing was not correct. So, he went to Vaithialingam who told him that while making the order, dated 10th November 1970, requiring the Secretary to speak, the Chief Minister was influenced by the fact that he (Chief Minister) had agreed to accept a gratification of Rs. 25,000 from H. P. Rao. Vedanarayanan has further stated that despite the direction of the Chief Minister, he did not make the precise proposal with regard to the contract rate to be awarded to Pushpaka in his revised note, Ex.CW-6/4, dated 17th November 1970, and sent it through Tapal to the Chief Minister, who on 18th November 1970, however, passed an order referring to the portion marked 'M' of an earlier office note dated 25th September 1970, of V. Sundaram Deputy Secretary.

Vedanarayanan has further stated that after the opening of the tenders for the year 1971-72, the Minister, Shri Anbil Dharmalingam called him and directed, that the tender of H. S. Shoba Singh, though lowest, should be rejected and a proposal be put for awarding the contract, to the others at the rate of Rs. 11 per acre. Witness argued that such a course would be incorrect, because, firstly, H. S. Shoba Singh had quoted Rs. 9.50, and secondly, the ceiling rate fixed by the Government of India was Rs. 10. Subsequently, in June 1971, the Minister Shri Anbil Dharmalingam reiterated his earlier directions saying that the Chief Minister had agreed to accept Rs. 11 per acre, as the rate to be awarded to the Operators and that a way should be found to reject the lowest quotation of H. S. Shoba Singh (P) Ltd. Finding the Minister adamant, and insistent on compliance, the witness, communicated those directions to Hari Bhaskar who confirmed that he had already received such directions from the Chief Minister.

Vedanarayanan has also deposed to the fact of the Minister Shri Anbil Dharmalingam's meeting the Operators on 2nd July 1971 for settling the commission to be paid through Ponnee Enterprises. His evidence in regard to this fact is mainly derivative.

The witness has also testified that on 15th July 1971, the Minister, Shri Dharmalingam called him and said that the Chief Minister had approved to award the contracts at Rs. 11 per acre, and the Chief Minister desired that a commission at Re. 1 per acre should be collected from the Operators and that Rajagopal who had hitherto been acting as their agent, should not be associated with the collection of the commission which should be got fixed at 90 paise, if not at Re. 1 per acre. Witness showed extreme reluctance to this proposal, but the Minister told him that he was communicating only the orders of the Chief Minister, and expected compliance. The Minister repeated his instructions to Vedanarayanan on the morning of 19th July 1971. The witness thereupon conveyed those instructions to Hari Bhaskar for communicating further to the Operators who were to meet the Minister in the evening of that day. Subsequently, the witness himself communicated these instructions to H. P. Rao, R. H. Captain, Sanghi and Dastoor in the afternoon, in the presence of Hari Bhaskar, and asked them to pay the commission at Re. 1 or at least at 90 paise per acre to the Minister, directly, eliminating Rajagopal, through an agent who might be nominated by the Minister. The witness has further stated how thereafter, then, four Operators met the Minister in the presence of the witness, who personally reiterated his demand for payment of commission at 90 Paise per acre through an agent other than Rajagopal.

Vedanarayanan has further stated how on 21st July 1971, he told Cambata, Rao and Captain about the gist of the Minister's demand regarding the commission and thereafter the witness took those Operators to the Minister whom the Operators requested for an early settlement of their bills relating to 1970-71. The witness has then given more or less the same account with regard to what transpired between the Operators and the Minister in the matter of commission, as has been deposed to by Cambata. After that meeting, the witness wrote a confidential D. O. letter to Hari Bhaskar informing him that the rate of Rs. 11 per acre for spraying was acceptable to the Government, but pursuant to the oral instructions of the Minister, told Hari Bhaskar, verbally, that he should not mention the contract rate in the work allocation orders, nor issue any signed contract-deeds to the Operators, nor clear their bills, without ensuring about payment of the commission, on the excuse that specific written orders of the Minister as to the contractual rate were awaited.

On the other hand, the witness put up the office note Ex. C.W-7/5, dated 27th July 1971, proposing allotment of areas to the individual operators for spraying by helicopter at Rs. 11 per acre, and by fixed wing at Rs. 8 per acre, justifying the increased rates on the ground of increased cost of propulsion, etc. He got this note approved by the Minister, Shri Dharmalingam, on the same date and sent it to the Chief Minister on 2nd August 1971. While communicating the Chief Minister's approval on telephone, Vaithialingam told the witness to keep a close watch over the Operators. The witness understood that the purpose of being so instructed was to ensure payment of the commission by the Operators to the Minister and the Chief Minister. Accordingly, the witness issued D.O. letter, dated 5th August 1971, Ex. C.W-7/6, to Hari Bhaskar. On the same date the witness personally conveyed to Cambata when he met the witness, that the Minister desired Cambata to give a personal guarantee for payment of the commission. With regard to this matter, the witness received from Cambata a telegram, dated 8th September 1971, later confirmed by a letter, in which the Operators had asked for a date to meet the Minister with "necessary documents".

Vedanarayanan has also confirmed Vaithialingam's account that on 13th August 1971, he informed the witness that Rao of Pushpaka had paid Rs. 25,000 to the Chief Minister as advance commission and consequently, his pending bills should be settled forthwith and signed contract delivered to him. The witness conveyed these instructions further to Hari Bhaskar. He has further stated that when on 30th August 1971, the Operators met him, he again pressed them

in compliance with the directions of the Chief Minister, earlier conveyed to him verbally by Vaithialingam, that they must pay advance commission as promised to the Chief Minister through Vaithialingam, before their bills could be cleared for payment and signed contracts delivered to them.

He has further testified that soon after the temporary exit of Shri Anbil Dharmalingam from the Cabinet, the Chief Minister on 13th September 1971 communicated verbal instructions through Vaithialingam to the witness that all payments to the Operators be stopped forthwith. Subsequently, some Operators met the witness around 18th September, 1971 and wanted to know the reasons for the stop-payment orders. The witness told them that these were the orders of the Chief Minister and could not be countermanded by him. Witness subsequently, learnt from Vaithialingam that the Operators had met him and were told that the Chief Minister was agreeable to accept payment of 90 paise per acre in two instalments of 45 paise each, as commission from the operators. Vaithialingam impressed upon the witness to tighten the control over the settlement of the bills of the Operators. Witness passed on these instructions to Hari Bhaskar.

The witness has further revealed that H. S. Shoba Singh's tender was rejected purely at the instance of the Minister Shri Dharmalingam. H. S. Shoba Singh (P) Ltd. was not on the blacklist.

Hari Bhaskar, C.W.9, who at all times material, was the Director of Agriculture, Tamil Nadu, has deposed that normally, after opening the tenders, he used to refer all the proposals regarding the aerial spraying work to the Government Secretariat for approval. The tenders for the year 1970-71 were opened by the Joint Director, Shri Reddiar. It was found that the Association uniformly quoted on behalf of its members, a rate of Rs. 9 per acre, while Pushpaka Aviation tendered to do the same work at Rs. 8 per acre, i.e., spraying from helicopter. Shri Reddiar thereupon put up an office note, Ex.C.W.9/1, dated 5th May 1970, and with this note the witness directly went to the Chief Minister, and in the presence of Shri Madhavan, Law Minister, explained the details of the aerial spraying programme which was estimated to cover 10 lakh acres. The Chief Minister perused the file and verbally directed the witness to allot tentatively, 1.5 lakh acres, to Pushpaka Aviation (P) Ltd. and the rest to the other Operators at Rs. 9 per acre. The Chief Minister further told the witness that the proposals need not be sent to the Government, and action to implement his directions be taken at his level. Thereafter, the witness returned to his office with the file and told the Joint Director about the directions of the Chief Minister, and asked him to put up a note accordingly with a draft order for his approval. Meanwhile, he found Shri Anbil Dharmalingam and Rajagopal waiting outside. Shri Anbil informed the witness that he was acting on behalf of the Operators and wanted to know whether the witness had received any instructions from the Chief Minister regarding the aerial spraying matter. Witness told him all about the instructions he had received from the Chief Minister regarding the award of the contracts. Shri Dharmalingam along with Rajagopal then went away, after telling the witness that C.P. Khemka was a representative in Madras who would discuss with him all matters pertaining to aerial Operations.

After approving the office note, (Ex. C.W. 9/1), put up by the joint Director, Shri Radhakrishna Reddiar, on 11th May 1970, the witness proceeded on tour instructing the Joint Director not to issue the orders, and await his return.

Hari Bhaskar has further stated that while he was on Camp at Trichy, Shri Anbil Dharmalingam, accompanied by Rajagopal, met him and enquired as to what had happened to the contracts. Witness told them that he would expedite the same after consulting the Officers of the Government Secretariat.

On his return to the headquarter, the witness received a telephone call from Vaithialingam who also asked him to expedite the matter. On 20th May 1970, the witness then took the file to the Secretariat and consulted the Secretary, Agriculture, Kumari Anna George and the Finance Secretary, Shri Venkataramanan, and informed them about the verbal directions given by the Chief Minister. Those Officers told the witness to go ahead, issue the orders and send up the proposals to the Government. The witness then directed the issue of the orders in accordance with the Office note, Ex. C.W. 9/1, that he had approved but with the 'pencil notation', Ex. C.W. 9/1-B, which is to the effect: that the file was being retained by him for discussion with Secretary, Agriculture and Secretary, Finance. Accordingly, the letter, Ex. C.W.9/2, dated 20th May 1970, under the signature of the Joint Director, dated 21st May 1970, was issued to the President of the Association.

Hari Bhaskar has also stated that he had issued the letter, dated May 30, 1970 to the President of the Association, inviting the Operators to meet the Minister for Agriculture on 4th June 1970 that he was present, alongwith Shri Diraviam, Secretary, Agriculture, and the Joint Director, Reddiar, at that meeting, wherein Smt. Muthu told C. P. Khemka, the representative of the Operators, that their quotation of Rs. 9 per acre was on the high side and must be reduced, but Khemka,

refused to do so, and thereupon the Minister dispersed the meeting with a note that only those who wanted the work at Rs. 8.25 per acre could contact the witness and get the orders. Hari Bhaskar has further vouched that the note, Ex. C.W. 9/5, in the hand of the Joint Director, Reddiar was a correct record of the proceedings of that meeting.

Witness further stated that the same evening he received a telephone call from Shri Royappa, the then Chief Secretary, asking him to send the file pertaining to aerial spraying contracts, directly to him. The witness immediately complied. Next morning, on being called by Shri Royappa, the witness met him and explained to him the background of the initial order as well as what transpired at the meeting held with the Operators by Smt. Muthu on the 4th June. Shri Royappa then told the witness that he had instructions from the Chief Minister to intervene and see that the contracts were awarded at Rs. 9 per acre to those Operators who were members of their Association. On 8th June 1970, the witness in accordance with the orders of the Government, communicated to him by Shri Diraviam on phone, issued the work orders and reported compliance as per letter Ex. C.W. 9/8.

Hari Bhaskar has further testified that on receiving a message on 16th June 1970 through Shri Diraviam, he met the Chief Minister who was then sitting in the Governor's room in the Secretariat along with the Minister for Agriculture and others. In answer to the Chief Minister's query the witness informed him that if Pushpaka Aviation was eliminated, the total area to be sprayed would be about 10 lakh acres. The Chief Minister then directed that the offer to Pushpaka be withdrawn, and the area formerly allotted to them, be divided among all the other Operators to be sprayed at Rs. 9 per acre. Immediately thereafter, the witness received from Shri Diraviam a note (Ex. C.W. 9/9) signed both by the Minister for Agriculture and the Chief Minister, making allocations to individual operators, omitting Pushpaka Aviation. Thereafter, as directed by the Chief Minister, the witness withdrew the offer made to Pushpaka as per order, dated 16th June 1970 (Ex. C.W. 5/3).

Hari Bhaskar has stated that sometime in September 1970, he received telephonic instructions from Vaithialingam that Pushpaka Aviation be allowed to deposit the security of Rs. 5,000 and their case for allocation of work be considered favourably. Witness was also asked to expedite his comments on H. P. Rao's representation. By his letter, dated 18th September 1970 (Ex. C.W. 9/11), the witness sent such comments to the Secretary, Agriculture. Two months later, on 18th November 1970, Vedanarayanan by a letter, dated 18th November 1970 (Ex. C.W. 9/12), conveyed the decision of the Government, to allot 1.5 lakh acres to Pushpaka Aviation for helicopter spraying at the rate of Rs. 9 per acre. Witness complied accordingly.

Hari Bhaskar has testified that on March 15, 1971, when he and the officers of his Directorate went to Shri Anbil Dharmalingam, the new Minister for Agriculture, for a courtesy call, the latter directed him to initiate aerial spraying programme for the year 1971-72 expeditiously. Accordingly, on the 17th March 1971, the Notification, Ex. CW-9/15, for inviting tenders was issued by his office.

Hari Bhaskar then stated how on opening the tenders, it was found that excepting H. S. Shoba Singh, the other Operator-members of the Association had quoted uniformly a rate of Rs. 11 per acre.

Witness has also stated that on July 2, 1971, Cambata, Captain, H.P. Rao and other Operators after their meeting with the Minister, Shri Anbil Dharmalingam, told the witness that the Minister had agreed to award the contracts at Rs. 11 per acre provided a commission of 80 paise per acre was paid to his friend, Rajagopal. Shri Hari Bhaskar has further stated that on receiving a telegram (mentioned in the office note Ex. CW-9/18) from Cambata, he fixed a meeting of the Operators with the Minister.

On 19th July 1971, the witness was called and informed by Vedanarayanan that the Minister, Shri Anbil Dharmalingam, desired to convey to the Operators that the commission should be enhanced to Re. 1 or at least 90 paise per acre, and should be paid through an agent other than Rajagopal. He has further testified how thereafter on the same date, Captain, H.P. Rao, Dastoor and Sanghi, first, met Vedanarayanan who communicated these instructions about the payment of the enhanced commission and the elimination of Rajagopal to the Operators, and thereafter, those Operators met the Minister, Shri Anbil Dharmalingam, in the presence of Vedanarayanan and the witness. After a general talk about allocations, the Operators and Vedanarayanan were taken by the Minister to a side-room for some discussions. The witness was not called into that room. After that meeting, in the Savera Hotel, one of the Operators told the witness that the Minister had discussed the question of paying 90 paise commission to an agent to be appointed by him, other than Rajagopal.

Witness was present at the meeting of Cambata and his companions with the Minister on July 21, 1971. The witness has in regard to the discussion at that meeting, given the same account as has been vouched by Cambata.

Hari Bhaskar has further deposed how on 5th August 1971, Vedanarayanan had told Cambata in the presence of the witness, to give a personal guarantee for payment of the commission by all the Operators, and Cambata put an alternative proposal to pay 10 per cent of the bills to the Association, directly.

Hari Bhaskar has further spoken about the receipt of a direction from Vedanarayanan on 13th August 1971, that the payments due to Pushpaka Aviation, Mahindra and Mahindra, Av-India and Helicopter Services should be settled, while the bills of the Companies represented by Cambata, Sanghi, Khemka and Maneckji should not be paid until cleared by the witness. Vedanarayanan told the witness on telephone, that as desired by the Minister, the payments due to these Operators be stopped : while the contract deed duly signed by the witness, be delivered to H.P. Rao. Accordingly, the witness issued the stop-payment order (Ex. CW-2/11).

The witness has further stated that a day after the exit of Shri Anbil Dharmalingam from the Ministry, Vaithialingam, on 13th September 1971, communicated to him that payment of all dues to the Operators should be stopped forthwith. Vaithialingam informed the witness that these stop-payment orders had been given by the Chief Minister because he thought that the Operators were becoming too smart and should be brought in line. Earlier, also, witness had received such stop-payment instructions through Vedanarayanan, and had accordingly issued the circular, Ex. CW-9/23, in which the ostensible reason given for stopping payments was that the Government Orders sanctioning the aerial spraying scheme for 1971-72 were yet to be received. The witness frankly admitted that this reason was not correct, because, later, when they issued orders releasing payments, the position was still the same as on 24th September 1971.

On 22nd September 1971, witness received a telephonic message from Vaithialingam that the Chief Minister desired that payments to the Operators be resumed forthwith. Accordingly, the witness got issued the order (Ex. CW-7/10), dated 24th September 1971, by his office under the signature of the Joint Director, Radhakrishnan.

Hari Bhaskar has further testified that after Shri Anbil was reinstated as Minister for Agriculture on 4th October 1971, the Operators came to meet him on 5th October 1971, and after that meeting, Shri Anbil Dharmalingam directed the witness to keep an eye on the payments made to the Operators. Some of the Operators informed the witness as to what transpired between them and the Minister at that meeting.

In the second week of October, 1971, the Operators, after meeting the Minister, again told the witness that they had paid the Minister his dues, and consequently, their pending bills be cleared for payment.

The witness has further confirmed that the Operator, Krishnan, used to collect from him the latest official figures concerning the acreages sprayed by the individual Operators. Simultaneously, in compliance with the instructions of the Minister, the witness used to supply such figures to the Minister.

The witness has stated that on one or two occasions, more, Cambata and his companions told him that they had paid further instalments of the commission to the Minister, but payments of the Operators, bills were released only on hearing from Vaithialingam, Vedanarayanan or Shri Dharmalingam, directly.

The witness stated that in the work allocation orders, Ex. CW-8/19 and Ex. CW-8/20, issued in favour of Cambata Aviation (P) Ltd., the contract rates at which the Operators were to be paid for the work, were not mentioned because of the instructions received by him from Vedanarayanan.

When the plea taken in their counter-affidavits by the Respondents was put to Hari Bhaskar he replied that the contract rate could have been brought down by negotiation with the Operators to a lower figure within the ceiling rate of Rs.10 fixed by the Government of India, if the State Government wanted to do so.

These witnesses whose evidence has been summarised above, constitute the backbone of the charges involved in this Allocation. The whole case, therefore, resolves itself into the question : whether their evidence is credit worthy and can be safely acted upon ?

Before proceeding to find an answer to this question on the facts of this case, it would be appropriate at this stage, to remind ourselves of the fundamental principles of prudence which govern the appreciation of the evidence of an accomplice. This is necessary because in their counter-affidavits the Respondents have alleged that Rajagopal, the Government officers concerned and the Operators who have filed affidavits/statements in response to the notices/notification under Rule 5(2), all sail in the same boat as accomplices.

Well then who is an 'accomplice'? An accomplice is a person who, having the requisite *mens rea*, participates in the commission of the actual crime. He is to be a *participes criminis*, in respect of the offence charged, whether as principal or as abettor. One broad test of ascertaining whether a witness falls in the category of accomplice, is, Does he sustain such a relation to or concern in the criminal act that he could be jointly indicted with the accused? It is not every participation in a crime which makes a party an 'accomplice' in it. There are two cases, however, in which a person has been held to be an accomplice even if he is not a *participes criminis*. Receivers of stolen property are taken to be accomplices of the thieves from whom they receive goods, on a trial for theft. Accomplices in previous similar offences committed by the accused on trial are deemed to be accomplices in the offence for which the accused is on trial, when evidence of the accused having committed crimes of identical type on other occasions, be admissible to prove the system and intent of the accused in committing the offence charged—[see *R. K. Dalmia v. Delhi Administration* (1963) 1, SCR 253-AIR 1962 SC 1870; *Shesamma v. State* (1971) 1 SCR 617 (AIR 1970 SC 1330)].

There is no cast-iron rule of law that accomplice evidence must be corroborated. That an accomplice is a competent witness : and, in law, a conviction can be based on his uncorroborated testimony, is clear from section 133, Evidence Act, itself. But there is a rule of prudence, which has, by long experience, acquired almost all the reverence of law. According to this rule of caution, it is generally unsafe to convict on the testimony of an accomplice unless corroborated in material particulars by independent evidence, circumstantial or direct.

Corroboration required for an accomplice means independent testimony. 'Independent' means independent of sources which are likely to be tainted. It follows therefrom that *ordinarily* the testimony of one accomplice would not be sufficient to corroborate that of another. But, if several accomplices, independently and without previous concert, give a consistent account of the crime implicating the accused, the Court may accept the several statements as corroborating each other. [*Haroon Haji Abdulla* (1968) 2 SCR 641-AIR 1968 SC 832 (837), *Mohd. Hussain Umar Kochre v. Dalip Singhji* (1970) 1, SCR 130-AIR 1970 SC 45.] Illustration (b) to s. 114, Evidence Act, itself, recognises that were the probability of previous concert among the several accomplices is excluded, the accounts independently given by the various accomplices may be used to corroborate each other. And *a fortiori*, if the accomplice whose testimony is sought to be used for corroboration, is in the circumstances of the case, a technical accomplice giving an account which is, in itself, natural, probable and credible.

It is not necessary that there should be independent confirmation of every material circumstance. All that is required is, that there must be some additional evidence rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it. The nature and extent of the corroboration required, necessarily varies with the circumstances of each case and also according to the particular circumstances of the offence charged.

In considering whether this rule of corroboration applies to a particular case, it must be remembered that all persons who technically fall within the category of 'accomplices' cannot be treated on precisely the same footing. In bribery cases, this distinction between a full-fledged accomplice and a technical accomplice assumes great importance by the very nature of the crime itself. While it is true that all persons who actually pay bribes or co-operate or act as intermediaries in such payments or are instrumental in the negotiations, will come within the category of 'accomplices', and the evidence of all such persons ought generally to be regarded with suspicion, to use the words of the Privy Council—"the degree of suspicion which will attach to it must, however, vary according to the extent and nature of the complicity". [*Srinivas Mall v. E.* AIR 1947 PC 135-26 Pat 460 (P.L.)].

From the view point of complicity, persons who are accomplices of a bribe-taker, may be placed in several grades.

In the top-grade is the unscrupulous, unblushing bribe-giver who pays the bribe to get an undue advantage or undue favour. Such a person is an accomplice of the deepest dye, and to his testimony the rule of independent corroboration will apply with full force. At the other extreme in the lowest grade, stand persons who are forced to offer bribe under threat of

pecuniary loss or harm or coercion. Such persons are not willing participants but victims of the extortionate designs of the bribe-taker. The rule of corroboration applies, if at all, with very little force to such a case [*Pappa Kamal Khan v. R.* 59, Bom. 486; *Dalpat Singh v. State of Rajasthan* (1968) 3, SCR 189—AIR 1969 SC 17].

Persons who co-operate or become instrumental in negotiating or procuring a bribe for another, without any motive of pecuniary gain or other advantage to themselves, but under the authoritarian dictates of a superior or under a reasonable apprehension that if they did not so act, they would suffer monetary loss or other harm, also, cannot be called voluntary associates of the bribe-taker. Such persons are not, in propriety, *participes criminis*. They are also in a category akin to that of victims of the offence. In cases of this kind, also, very slight corroboration would be sufficient to make the evidence of the 'accomplice', technically so called, credit worthy against the receiver of the bribe.

A shade more in complicity, in the grey zone of this grade, fall persons, who pay or are obliged to pay bribe as "speed money" to induce a public servant to do just his plain duty which he refused to do otherwise, or to accelerate the doing of something which, in itself, is not unlawful or improper. Since time means money and administrative delays are not unusual, nor always sinister, the *modus operandi* of corrupt public servants may take the course of accepting money for doing what is lawful more quickly.

Between these two extremes—the arch-accomplice and the technical accomplice, there are several gradations and shades of accomplicehood, and consequent legal infamy and need for more or less, corroboration. A person who at one time offers bribes to procure business, but subsequently, of his own volition changes his mind and refuses to offer bribes any more in respect of similar subsequent transactions, still remains, technically, an accomplice, although not as unreliable as the one who is constantly persistent in employing that technique.

So much will suffice about the grades of accomplices and the extent and nature of corroboration required to establish their credit. I now pass on to notice briefly the tests which are generally applied to appraise the testimony of an accomplice.

It is well settled that in appreciating the evidence of an accomplice the first initial and essential question to consider is, whether the story he relates appears intrinsically to be a natural and probable catalogue of events. If the story narrated by him appears to be palpably unbelievable or inherently improbable, his evidence should be rejected *brevi manu*, and no question of corroboration arises, for the simple reason that no amount of corroboration can transform what is manifest falsehood into truth. If the first test is satisfied, the further question would be whether his evidence is sufficiently corroborated. But, the accomplice's evidence and the corroborative pieces of evidence need not be treated in two different compartments. In many cases these two aspects would be so inter-twined that it would not be possible to give a separate treatment, for, as often as not, the reliability of an accomplice's evidence, though not exclusively, would mostly depend upon the corroborative support it drives from other unimpeachable pieces of evidence [see *E. G. Barsay v. State of Bombay* (1962)2, SCR, 195 ; *Lachhi Ram v. Punjab State* (1961)3, SCR 236; *Ravinder Singh v. State of Haryana* AIR 1975 SC 856].

The first point to be considered in the light of the above principles is, whether all these witnesses can be categorised as 'accomplices'.

First, I take up V. Rajagopal CW-1.

Learned Additional Solicitor-General appearing for the Central Government contended that V. Rajagopal could not be dubbed as accomplice because it was not he who had by the exercise of his personal influence, induced the award of aerial spraying contracts to the Operators for the year 1970-71, but it was his friend, Shri Anbil Dharmalingam, who had so induced the Government of Tamil Nadu. It was only the act of his friend, Shri Anbil Dharmalingam—proceeds the argument—and not of Rajagopal, that amounted to an offence under section 163, Penal Code, because Shri Anbil Dharmalingam on whom Rajagopal exercised his influence in the matter, was not a 'public servant' at that time.

The contention is fallacious.

There can be no dispute that if the allegation that Shri Anbil Dharmalingam being motivated by the agreement to receive commission from the Operators, induced, by the exercise of his personal influence, the Chief Minister, Shri M. Karunanidhi, to award the aerial spraying contracts for 1970-71 to the Operators at the rate of Rs. 9 per acre, is correct, he would be guilty of an offence under section 163, Penal Code. Rajagopal according to his own statement, negotiated and arrived at the arrangement to collect the commission from the Operators, in concert with and at the instance of Shri Anbil Dharmalingam. He intentionally aided and facilitated the commission of the alleged criminal act of Shri Anbil Dharmalingam. Thus, Rajagopal was an abettor, and as such, an accomplice of Shri Anbil Dharmalingam.

It is true that under the arrangement which he negotiated at the instance and in active and open concert with Shri Anbil Dharmalingam, then Minister for Agriculture, in respect of the contracts of 1971-72, his share of the commission to be collected through Ponnee Enterprises was very small as compared with that of Shri Anbil Dharmalingam, and even that arrangement was not acted upon. But these facts, while reducing the degree of suspicion which is supposed to attach to the testimony of an accomplice, do not take him out of the category of accomplice, altogether.

Next I take up the case of the Operators. The point for consideration is, whether their act in agreeing to pay commission to the firm, Ponnee Agencies, in which Rajagopal and Shri Anbil Dharmalingam, according to the contention of the Memorialist, held overt or covert shares, amounted to an "abetment" of the offence supposed to have been committed by Shri Anbil Dharmalingam.

Learned Solicitor contends that the Operators in respect of the contracts of 1970-71, never came in contact with Shri Anbil Dharmalingam; that they were concerned only with Rajagopal and his ostensible partners in the Ponnee Agencies; that one of the considerations which weighed with the Operators in entering into an agreement (Ex. CW 1/4) with the Ponnee Agencies, was, that the partners of these Agencies would canvass the Panchayats and the Villagers to pass resolutions demanding aerial spraying of their crops. According to the Solicitor this was a perfectly lawful object for which the agreement was made. Learned Solicitor further contended that since there was no privity of any kind between the Operators and Shri Anbil Dharmalingam, they could not be said to have, intentionally aided or instigated Shri Anbil Dharmalingam in getting this commission. Stress has been laid on the fact that the Operators at the time of entering into this arrangement with Ponnee Agencies, had no knowledge that any part of the commission would be paid to Shri Anbil Dharmalingam. All that they knew was that at the instance of Rajagopal, his close friend, Shri Anbil Dharmalingam, would exercise his personal influence with the Government and its officers for helping the Operators in procuring contracts at the quoted rate. It was maintained that in these circumstances, the Operators could not be said to have abetted the offence of "abetment" committed by Rajagopal. It was argued that the criminal intention is the gist of the offence of abetment by aid or instigation and that such an intention was wanting on the part of the Operators at the time of entering into the agreement (Ex. CW 1/4).

It appears to me, there is force in this contention.

Section 107 defines "abetment" which can be by instigation, or by engaging in conspiracy or by intentional aid. But all these three forms of abetment postulate specific kinds of *mens rea*. "Instigation" within the meaning of section 107, implies knowledge of the criminality of an act. Similarly, criminal intention is the essence of abetment by aid.

There is no clinching evidence to show that the Operators instigated, or intentionally aided Rajagopal to pass on any part of that commission collected from them, to Shri Anbil Dharmalingam as a gratification or consideration for exercising his personal influence with the Government or public servants. It seems that, Rajagopal, did not disclose to the Operators—nor did they come to know from any other source—that the commission which was to be paid to Ponnee Agencies was meant, wholly or in part, as a reward for Shri Anbil Dharmalingam for procuring the contracts for the Operators by the exercise of his personal influence on the Chief Minister or public servants. Merely inducing a Government servant by the exercise of personal influence to do or forbear to do any official act or show favour or disfavour to any person in the exercise of his official functions, is not an offence under section 163, Penal Code, unless there is the additional element that the person exercising his personal influence has accepted or obtained or agreed to accept or attempted to obtain any gratification as a motive or reward for such inducing. Whatever may be the position of the Operators with regard to the subsequent agreement, dated 2nd July 1971, with Ponnee Enterprises, it cannot be said beyond doubt, that in arriving at the arrangement (C W, 1/4) with the Ponnee Enterprises Agencies they had the *mens rea* requisite to bring their case under any of the three Clauses of s. 107, Penal Code. It is true that under Explanation IV to s. 108 Penal Code when the abetment of an offence is an offence, the abetment of such an abetment is also an offence. This means that a person may himself be an abettor by the intervention of a third person without any direct communication between himself and the person employed to do the thing. But even abetment of abetment, when it is not a case of conspiracy, postulates the necessary criminal intent or knowledge of the criminality of the act. In the circumstances of the case, it could not be clearly held that at the time of entering into this arrangement they knew that they were intentionally aiding or instigating Rajagopal in committing the abetment of the offence alleged to have been committed by Shri Anbil Dharmalingam. Nor can it be indubitably said on the evidence on record, that they had engaged in a criminal conspiracy. They cannot be attributed the knowledge that Shri Anbil Dharmalingam was accepting or agreeing to accept any gratification for himself or for Rajagopal as a motive or reward to induce the Government for awarding these contracts. All that they knew was that Shri Anbil Dharmalingam at the instance of Rajagopal,

would be exercising his personal influence with the Chief Minister, to help the Operators in getting the rates quoted by them. Thus, their intention or knowledge as to the criminality of the act which Shri Anbil Dharmalingam was supposed to do, was lacking, when they agreed to pay the commission to Rajagopal or his Ponnee Agencies. It is doubtful whether in such a situation they could be called as 'accomplices'.

Even if it is assumed that they had knowledge of the criminality of the acts which Shri Anbil Dharmalingam and Rajagopal were expected to do, then also they would be *technical* accomplices, their complicity being of the lowest grade, with practically, no suspicion attaching to their credibility. Khemka's complicity will be a shade more than that of his companions, as it was he who was the most informed Operator about the nature of the arrangement that he had negotiated with Ponnee Agencies.

It remains to be seen whether their conduct in relation to the Agreement, dated 2nd July 1971, to pay commission at the rate of 80 paise per acre for the acreage sprayed under contracts of the year 1971-72, was that of accomplices. In this connection it may be recalled that unlike the earlier arrangement with the Ponnee Agencies, this Agreement was executed by the Operators under the compulsion of circumstances. At that time things had radically changed, Shri Anbil Dharmalingam was now a part of the Government and was in a position to impose his own terms on the Operators. It is in evidence that when the negotiations conducted by Shri Anbil Dharmalingam through his mouthpiece, Rajagopal, were not making headway, Shri Anbil Dharmalingam threw off the veil and came out into the open and on July 2, 1971 directly dictated his own terms to the Operators. It was only as a result of this direct pressure put by the Minister, Shri Anbil Dharmalingam that the Operators submitted to pay the commission as demanded by him, through the Ponnee Enterprises, and executed the Agreement, dated 2nd July 1971 (C.W. 2/7). Even so this Agreement remained still born and was never acted upon by the Operators.

Be that as it may, when subsequently, the Chief Minister and the Minister for Agriculture started demanding "commission" at the enhanced rate, the conduct of the Operators was not that of willing participants in the payment of the bribes. They resisted the illegal demands made by the Chief Minister and the Minister, Shri Anbil Dharmalingam, to the utmost. All the payments which they made under the euphemistic name of "commission", were extorted from them. It can be reasonably inferred from the circumstances on record that the Chief Minister and Shri Anbil Dharmalingam, Minister for Agriculture subjected the Operators to systematic coercion in accordance with a plan conceived by them to extract these gratifications from the Operators. The pressure tactics employed to force them to pay this "commission" may be enumerated as follows:—

(i) They were given to understand that the contracts (of 1971-72) for aerial spraying from helicopter, were being awarded to them at the rate of Rs. 11 per acre ;

(ii) The contract deeds, in duplicate, signed by the Operators, were obtained from them by the Director of Agriculture with the representation that one copy of the same would be returned to them in due course after being signed and completed on behalf of the Government ; but with the solitary exception of Pushpaka Aviation whose Managing Director had more readily complied with demand of the Chief Minister to pay him the gratification, such copies of the signed contract deeds were never returned to the Operators, despite repeated demands.

(iii) With such induced belief, that they have been awarded the contracts at Rs. 11 per acre, the Operators were made to undertake large-scale aerial spraying operations and incur heavy expenditure, in compliance with work allocation orders in which the rate at which they were to be paid for the spraying, was deliberately not specified.

(iv) Unlike the practice which was in vogue in 1970-71, the clearance of the bills of the Operators for payment was put under the centralised control of the Director of Agriculture, who was directed not to clear these bills, without the verbal orders of the Chief Minister or the Minister of Agriculture communicated either directly or through Vaithialingam or Vedanarayanan.

(v) Such orders releasing payments or clearance of the bills were issued only when the concerned Operator/Operators had paid the commission, as demanded, in respect of a particular area covered during a period by the spraying operations, in advance, without vouchers.

(vi) The non-return of the signed contract-deeds, was obviously intended to serve a double purpose. While the absence of formal contracts, had emasculated the Operators from enforcing payment of their bills through Court, the Government could, by signing those contracts, at any time, impose a penalty at the rate of Rs. 5 per acre on the allocated acreage, on the slightest excuse of a default of the Operators in the performance of the contracts. Thus the, non-delivery of the signed contract deeds to the Operators, posed a standing threat like the Sword of Damocles over the heads of the Operators.

All this *modus operandi* was engineered by verbal instructions emanating from the Chief Minister and the Minister for Agriculture. The Operators were, by these unfair tactics, verging on fraud, first induced and trapped into a situation of no-escape, then subjected to coercion till they were "brought in line" and had no alternative but to submit to the extortionate demands of the Chief Minister and the Minister, for gratifications. They were in such a situation, that the only alternative to non-compliance with these extortionate demands was their utter ruin. This situation as it obtained on September 18, 1971, has been graphically described by Cambata C.W. 8:

"We informed Mr. Vaithialingam all the facts and the total history regarding Rajagopal and Mr. Dharmalingam and how we had been asked by them to pay commission. We also informed him the state of the industry as such. He then told us that the commission would have to be paid. We then went into great detail into the economics of aerial spraying and implored him that most of the Operators had incurred very heavy expenditure and, in fact, all our balance-sheets showed losses in the previous years. We also brought to his notice various other aspects such as transportation costs, high cost of fuel, heavy camp expenditure, etc., and submitted that the burden of 90 paise per acre was far too heavy. We were informed by Mr. Vaithialingam that the Chief Minister did not desire to see anybody from outside the State and had asked him (Mr. Vaithialingam) to convey to us that if we did not pay the commission of 90 paise immediately in advance he would issue orders to cancel all aerial spraying in Tamil Nadu. We then asked Vaithialingam as to who was the agent to whom we could issue the cheque. Mr. Vaithialingam told us that there was no question of cheques or agent, that the amount had to be paid to the Chief Minister in currency notes, then and there. We informed him that this was impossible, and that all along we had been assured that an agent would be appointed. We also informed him that the only method by which we could pay this commission, was by withdrawing money from the Banks officially, and, in fact, most of us were working on overdrafts from the Banks. We emphasised that none of us was in a position to pay cash money. Mr. Vaithialingam then informed us that this was not correct as one operator had already paid Rs. 50,000 in cash, to the Chief Minister. I was shocked at this statement, and we started looking at each other. I then asked Mr. Vaithialingam if he could disclose the name of that operator. He pointed to Mr. Rao and said that the gentleman was sitting there. We were appalled at this statement and requested Mr. Vaithialingam to give us five minutes by ourselves. Some of the members were so annoyed that we had to restrain them physically from attacking Mr. Rao. We then assessed the situation which was that nearly 300,000 acres had already been sprayed by that time, which meant that the Operators were due nearly Rs. 30 lakhs by the Government. All our fleets in toto were committed to the State of Tamil Nadu and we had not even quoted to any other State, and at this stage, it would have been impossible for any Operator to get any work in the rest of India. We had very heavy commitments to our Banks where some bills had been discounted. We also required money to continue paying staff salaries and particularly our field expenses. We were in a quandry. The only money we had were the cheques we had brought with us which, according to Mr. Vaithialingam, were unacceptable. The only alternative left was to try and play for time to enable us to obtain an early legal opinion as to where we stood... We then returned to Vaithialingam and expressed our difficulties. After a lot of pleading by us, he said that the only terms he could agree to would be, for us to return on the 22nd with 50% of the commission amount, namely, at 45 paise per acre for all the work which had been executed till the 19th September 1971. We returned to Bombay and asked for a quick legal opinion as to our position. We were asked (1) to produce signed agreements with the Government. We were unable to do so. (2) We produced the allocation orders. We were advised that in the absence of any rates being mentioned on the orders, they could not be considered valid. We were further advised that since we had left signed contracts with the Government, the Government could cancel our aerial spraying on some pretext or the other, invoke the penalty clause, which was there in the contract, imposing penalty at Rs. 5 an acre, and which would have, in the aggregate, meant a penalty on the Operators to the tune of Rs. 40 lakhs. If we decided to withdraw our aircraft, this also could be prevented by the State Government as the aircraft were in the State of Tamil Nadu. We were also informed that the only other recourse would be to file a suit for the recovery of our dues in the Madras Courts as the Jurisdiction on the basis of the agreement, was in Madras. We were further advised that in the event of our filing such a suit, it was obvious that the Government would invoke the penalty clause, and we may therefore be asked by the courts in Madras to deposit this amount as security. Such a legal action far from being practicable, would also be extremely costly and time-consuming. Another important factor was that if any State in India blacklisted an Operator for non-performance, he would immediately and automatically be removed from the list of approved Operators of the Government of India and thus could not be able to obtain contracts anywhere in India. Such an order of course would be appealable. We were caught in such a situation that if we took legal action, our companies would have to close down, as none of us were in a position, financially, to take recourse to such action. It was also obvious to us that the whole set of circumstances which had preceded this meeting were designed to put

us in the very predicament that we found ourselves in and that we had no other alternative but to submit to this demand of the Chief Minister and pay 90 paise per acre to the Chief Minister through Vaithialingam.

Cambata's statement quoted above, receives full support from the testimony of Hari Bhaskar Vedanarayanan and Vaithialingam regarding communication and the implementation of the extortionate directions of the Chief Minister and the Minister, Shri Anbil Dharmalingam. The official records also support them. I am therefore of opinion that Cambata and Captain are not wrong in saying that they were not accomplices but *victims* of an extortion plan conceived by the Chief Minister and the Agriculture Minister, Shri Anbil Dharmalingam, to squeeze out illegal payments from them.

Such persons from whom illegal gratifications are extorted or extracted under compulsion, cannot be said to be *participes criminis*. As held by the Supreme Court in *Dalpat Singh's* case (supra) the rule of corroboration is not attracted to the case of such persons. Even if by taking an over-all view of these Operators' conduct, they are assigned the grade of technical accomplices, then also, in the circumstances of the case, very slight corroboration would be required to act upon their testimony. As shall be discussed presently, there is substantial corroboration of their testimony from other evidence, circumstantial and direct.

Now remains the case of the three officers, Vaithialingam, Vedanarayanan and Hari Bhaskar. All the three, to a lesser or a greater degree, co-operated in the implementation of the extortion plan conceived by the Minister and the Chief Minister to extract gratifications from the Operators. However, the degree of complicity in the case of all the three is not the same. Vaithialingam was instrumental in receiving the tainted money from the Operators and transmitting the same to the Chief Minister. But he did not get any pecuniary gain or share out of it. He did not, as he says, by rendering this "service" to the Chief Minister—which was a disservice to the public—get any advantage or advancement in service prospects, such as promotion, higher salary, etc. He willingly and firmly carried out the instructions of his Chief Minister in canvassing and threatening the Operators to pay the gratification to him for passing on to his Chief. Technically therefore, he was an accomplice, and of a grade higher than the other two.

Vedanarayanan also can be said to be a technical accomplice, but of a lesser grade. He did not act as a conduit for receiving and passing on the gratifications to the Chief Minister or the Minister for Agriculture. In the beginning when he took over as Secretary, Agriculture, he showed reluctance to put up a proposal, in favour of Pushpaka Aviation, in terms as directed by the Chief Minister, because he thought that that direction was not correct. Subsequently, when in August 1971, Shri Anbil Dharmalingam asked him to reject the tender of H. S. Shoba Singh (Private) Ltd., which was the lowest, and to accept the tender, at Rs. 11 per acre, of the other Operators, he, at first, showed extreme reluctance and demurred that this proposal was not correct for two reasons, viz., *Firstly*, the tender of H. S. Shoba Singh (P) Ltd., was the lowest and genuine, and that Operator was not on the black list, and *Secondly*, the quotation of Rs. 11 per acre was above the ceiling rate of Rs. 10 fixed by the Government of India. But when Shri Anbil Dharmalingam persisted and peremptorily told him that he was communicating only the orders of the Chief Minister which had to be complied with as part of his duty, he meekly submitted to do what, according to him, his conscience would not permit. Thereafter, he had been unhesitatingly implementing the extortion plan conceived by the Chief Minister and the Minister for Agriculture. He also adopted double-dealing tactics in carrying out the explicit or implicit oral directions of the Minister and the Chief Minister. On the one hand, he communicated orders in writing, through a Confidential D.O. letter to Hari Bhaskar, telling him that the Government had approved and accepted the rate of Rs. 11 per acre for allocating the aerial spraying work in 1971-72, but contemporaneously or soon thereafter, he verbally conveyed to Hari Bhaskar not to deliver the signed contract-deeds to the Operators and not to specify the contract rate in the work allocation orders to be issued to the Operators.

Then comes the case of Hari Bhaskar. His complicity is of the lowest degree. According to his own admission, he felt duty-bound to carry out those improper orders of the Chief Minister and the Minister for Agriculture.

These official witnesses were questioned as to why they carried out the verbal directions of the Chief Minister and the Minister for Agriculture which they thought were wrong and improper. To the plea taken by the Respondents in their counter-affidavits, to the effect that, these witnesses were accomplices and were telling lies to save their own skin, Vaithialingam replied :—

"The role of the Private Secretary is to carry out the instructions of the Chief Minister without hesitation. Any unbiased person who knows the working of the administrative machinery of the Government will definitely come to the conclusion that there could not be any other alternative for a Private Secretary except to do so. That does not necessarily follow that I was doing it with the fear or with the idea to save my job."

Earlier, he said ; “ *Mens rea* of guiltiness which is a necessary ingredient (of crime), was not to be found in my actions. When *mens rea* was absent, there could be no question of my acts concerned being criminal in nature. “The money was received, so far as I was concerned, without any criminal intent, motive, knowledge or for material gains to myself. I was only, an innocent instrument passing on the money to the Chief Minister. From the record available it will be seen that I did not get any accelerated promotion at any stage. The promotion was given to me only according to my seniority and no special favouritism was shown to me. I was not actuated by any motive to win favour of the Chief Minister ”.

While denying that his role in the matter in question was that of an accomplice, Vedanarayanan said :

“ It is wholly and entirely incorrect. I would like to submit that it is clear from the records that I had been arguing even with the Chief Minister regarding acceptance of the lowest tender both in the case of Mr. Rao and subsequently in the case of M/s Shoba Singh. If I had any such inclination, as has been wildly imputed, I would not be arguing for the lowest tender in those cases. I had submitted the correct position at the risk of incurring his displeasure and pointed out the incorrectness both to Mr. Dharmalingam, the Minister for Agriculture, and to the Chief Minister regarding the rates decided by them. I had also shown extreme reluctance in carrying out those orders. If I had anything to do with the deal, as has been suggested, I would not have told the entire thing to the Law Minister and sought his interference and assistance. It will also be seen that the operators came to my room only for subsequent discussions and getting favourable orders from the Minister of Agriculture and the Chief Minister, Mr. Karunanidhi. ”

The allegation of Shri Karunanidhi in his counter-affidavit that the witness was also under a cloud, was put to him. He stated that it was factually incorrect that “ any criminal case relating to frauds, was registered against me. No criminal case, whatever, was registered against me ”.

He further conceded that some departmental proceedings were pending against him wherein the charge was that he had done certain acts in excess of his powers.

Hari Bhaskar was also questioned on this point. He submitted that he had acted only under instructions of the Chief Minister, the Minister for Agriculture or the Secretary, Agriculture and at no time had he taken any initiative in this programme. He admitted that he realised that some of the instructions were not correct. With particular reference to the attempt made by Smt. Muthu on 4th June 1970 to bring down the rate quoted by the Operators, through negotiations, to Rs. 8.25 per acre, the witness was asked why he did not communicate to Smt. Muthu that there was something hanky-panky going on between the Operators and the Chief Minister, through Shri Anbil Dharmalingam and Rajagopal. He replied that Government servants “ cannot carry such reports about the Chief Minister of a State.....I did not think it was wise for me to say anything to her of what I had learnt only from others. I had (directions from the) Chief Minister to issue the orders for aerial spraying and had cleared the matter with the Secretary, Agriculture. The very fact that the Chief Secretary later intervened in order to issue orders at Rs. 9 per acre, is revealing of the fact that the orders had the sanction of the Chief Minister. ”

He was then asked; “ Do you think that blind obedience or implementation of improper instructions received from the Secretary or Mr. Vedanarayanan, was the proper conduct of a responsible Government officer ? ” The witness replied :

“ I would submit that one had to take into account the state of the Civil Service in Tamil Nadu at that time. We already had before us two object lessons—the removal of Mr. Royappa as the Chief Secretary and the transfer of Mr. Mahadevan from the post of Inspector-General of Police. These were the highest posts in the Civil Service. What would have been my fate if I did not carry out those orders of the Chief Minister, can be well-imagined. ”

Thus the position appears to be that Vaithialingam became instrumental in canvassing and extracting the gratifications from the Operators for the Chief Minister because, he thought it was his duty as Private Secretary to unhesitatingly carry out all orders of his Chief, irrespective of whether those orders were manifestly improper or illegal, or amounted to an offence.

As regards Vedanarayanan, initially, when he was newly inducted as Agriculture Secretary to Government, he did register mild protests about the incorrectness or impropriety of the instructions given to him by the Minister or the Chief Minister, but later on, particularly in regard to the contracts of 1971-72, he carried out all such instructions, even against his conscience, and became instrumental in the furtherance of the extortionate plan conceived by the Chief Minister and the Minister of Agriculture to extract gratifications from the Operators.

Hari Bhaskar complied with the wrong and improper instructions of his superiors, because of the fear that if he disobeyed them or acted otherwise, he might lose his job or suffer adversely in his service career.

Thus all these three witnesses can not be said to have co-operated in these affairs entirely of their own free will, but under constraints stemming from their own mistaken notions and misplaced sense of duty to obey even manifestly improper orders of their superiors. They are therefore in the category of technical accomplices. Very slight corroboration, if at all, will be necessary to establish their credit.

S.A. Ramachandran, James Fredrick, Pat Dimncy cannot, even technically, be called 'accomplices'. They were not Directors of any aircraft Company. They were only their employees or local representatives. Moreover, J. R. Modi, principal of S. A. Ramachandran, registered his strong opposition to pay any commission or gratification, off-the-record, to anybody. Perhaps, that was why his Company did not undertake aerial spraying work in Tamil Nadu for 1971-72.

From the above categorisation of witnesses, two results follow : Firstly to the evidence of those witnesses, who have been categorised technical accomplices, the rule of corroboration has, if at all, only nominal application. Secondly, the evidence of the 'technical' accomplices, namely, the Operators and the three officials, can be used to corroborate each other's testimony and that of Rajagopal. The evidence rendered by these three sets of witnesses comes from sources which are independent of each other and there is no suspicion of preconcert among them. As a matter of fact, Cambata was summoned directly from England. There could be no question of his joining hands with Rajagopal and the three Government officials to give evidence against the Respondents.

Barring natural variations and minor discrepancies, the account given by these three sets of witnesses, namely, Rajagopal, the Operators and the Government officials, is consistent in all material particulars, and fully accords with the surrounding circumstances and the natural probabilities of the case. I am conscious of the fact that possibly, they could have been more thoroughly cross-examined and their credit better tested, if the Respondents had participated in the proceedings, but, at the same time, judging from their frank, and straight demeanour in the witness-box, the natural and probable catalogue of events narrated by them in a vivid, graphic manner, the answers given by them to the volley of probing questions put to them by the Commission or its Counsel, the absence of any preconcert among them, no hostile animus towards the Respondents ; the independent stations and different avocations in life of these witnesses, it would not be wrong to presume that these witnesses would have emerged unscathed from any amount of cross-examination, for, no amount of cross-examination can demolish rock-ribbed truth. Their evidence is cogent, convincing and reliable.

The first test which is applied to the testimony of an accomplice-rather to that of every witness thus stands fully satisfied in the case of these witnesses. Even if their evidence is appraised by strict standards applicable in a criminal trial, it can safely be acted upon, and *a fortiori*, in a fact-finding inquiry under Section 3, of the Commissions of Inquiry Act, 1952.

The second test, also, applicable to the evidence of an accomplice has been more than satisfied. There is documentary, circumstantial and oral evidence on record of an unimpeachable character which confirms and lends reassurance to the testimony of these witnesses in material particulars.

I will first apply the test of corroboration to the evidence of V. Rajagopal (C.W-1), by referring, as far as possible, to his own sworn words with necessary abridgement re-arrangement, condensation and addition of parenthesis.

(i) This first important, introductory fact deposed to by Rajagopal is that of his close friendship with Shri Anbil Dharmalingam and the latter's influence on the Chief Minister, Shri M. Karunanidhi and the Government servants, particularly Hari Bhaskar. In this connection, he has stated :

"I have known Shri Anbil Dharmalingam for a very long time. He was intimately known to my father-in-law's brother, Shri Raja Chidambaram. Shri Anbil Dharmalingam was a very powerful leader of the D.M.K. Party in Tamil Nadu. He was also District Secretary of the D.M.K. Party for a very long time and as such, had considerable influence among the top leaders of the Party, including Shri M. Karunanidhi, the then Chief Minister of Tamil Nadu. I came in contact with Shri Anbil Dharmalingam after my marriage in 1960. My acquaintance with him developed into friendship. I used to arrange for him transport, whenever required. He used

to visit Uppiliapuram and stay at my place. As we became closer, I used to meet some of his expenditure for his trips to Madras and other places. Later, I had taken (on lease) House No. 138, Palace Road, Madras-4 and maintained it as a Guest House. Whenever Shri Anbil Dharmalingam visited Madras, he used to stay in this house. All expenses of his boarding and lodging were borne by me, only.

(Pages 3, 4 and 5 of his deposition and paras 3, 4 and 5 of his affidavit.)

"Sometime during 1967, Shri Hari Bhaskar became the Collector of Tiruchy. Shri Anbil Dharmalingam became a close friend of Shri Bhaskar. I met Shri Hari Bhaskar in the company of Shri Anbil Dharmalingam on some occasions.

(Paragraph 8 of the Affidavit.)

"I was a P.W.D. First Class Contractor. At the end of 1969 (or) in 1970 I met the Superintending Engineer Shri Ramaswami....Shri Ramaswami.....introduced me to Desikan and Jayaraman, contractors, saying that I wielded great influence with Shri Anbil Dharmalingam and that I was his close friend."

(Pages 5 and 6 of deposition.)

In his counter-affidavit dated, 19th September 1976, Shri Anbil Dharmalingam, has first tried to deny his family friendship with Rajagopal, but thereafter he has admitted a good many facts which confirm that he had very thick relations with Rajagopal. Shri Anbil Dharmalingam has conceded :

"Thiru Rajagopal moved closely with my son in organising functions at the Exhibition. He also used to meet me occasionally. But my cars were also being used by my son and other members of the D.M.K. Party including Thiru Rajagopal. I now learn from my son that on these occasions, as Thiru Rajagopal was moving with him very closely, he had paid for petrol."

Vedanarayanan (CW-7) has testified, that he had seen on many occasions V. Rajagopal moving about in the company of Shri Anbil Dharmalingam.

Shri Hari Bhaskar, C.W. 9, has stated that Shri Anbil Dharmalingam came to him on some occasions in the company of V. Rajagopal in connection with the aerial spraying contracts.

To the same effect is the evidence of V. S. Ramaswami, (No. 20) who was the Superintending Engineer of P.W.D. at the relevant time. Ramaswamy has deposed that V. Rajagopal was very close and friendly with Shri Anbil Dharmalingam. The witness had seen them together on many occasions. In December 1969 or in January 1970, the witness had introduced V. Rajagopal to N. Jayaraman and R. Desikan, two other Contractors of his Division, representing V. Rajagopal to be a person having good influence at the Government level and a good friend of Shri Anbil.

V. S. Ramaswami is a retired Superintending Engineer. He had no axe of his own to grind against the Respondents. He appears to be an independent and respectable witness. There is absolutely no reason to disbelieve his un rebutted evidence.

Apart from the evidence of Shri Ramaswami and the above two officials, there is other evidence, also, which confirms V. Rajagopal's version with regard to his close connection with Shri Anbil. At this place, it would be sufficient to say, that the evidence of V. S. Ramaswami, Hari Bhaskar and P. N. Vedanarayanan supplies ample independent corroboration with regard to what finds mention in the above-quoted passages of V. Rajagopal's testimony.

(ii) The second bunch of evidentiary facts deposed to by V. Rajagopal related to the question as to how and why he entered into this "commission" business and assumed the role he did in collecting the commission through the Ponnee Agencies from the Operators and share a substantial part of the same with Shri Anbil Dharmalingam. In this connection, V. Rajagopal has stated :

"Sometime in February 1970, Shri Jayaraman came to my village with Shri R. Seshadri of T. Stanes and Co., Shri Seshadri is the elder brother of Shri Desikan. M/s. Stanes and Co., are the agents for CIBA. They requested me to arrange for (Government) orders for supply of pesticides..... At their request, I telephoned Shri Anbil, who was then in the Nathan Press, Tiruchy. He came straight to the Ajanta Hotel where they (Seshadri, N. Ramachandran

representatives of CIBA and Jayaraman) were staying. Shri Seshadri and his companions were very much impressed at the response given by Anbil Dharmalingam and the influence I had with him.

(Pages 7 of the deposition, and 10 of affidavit.)

"Anbil said that Shri Hari Bhaskar, former Collector, had known him closely and that he would be able to influence both at the Governmental level and at the Director's level. Anbil told (them) that if they could secure him 5 per cent commission from the CIBA Co., he would exercise his influence for getting orders for supply of pesticides for aerial spray, from the Government. Immediately, thereon, CIBA's representative, Ramachandran and T. Stanes' Seshadri agreed to pay the commission.

(Page 8 of the deposition.)

"Shri Seshadri further informed us that the Aircraft Operators were making lot of profit. Thereupon, Anbil immediately told him that he could use his influence and secure orders for aerial spraying of crops from the Government of Tamil Nadu, provided those operators also paid commission to him; to which, Shri Seshadri replied that he would be in a position to introduce the aircraft Operators, with whom he could talk over the matter. Shri Anbil immediately asked me to pursue the matter."

(Pages 8 and 9 of the deposition.)

With regard to the facts appearing in the quotes above, V. Rajagopal's testimony receives valuable corroboration from the un rebutted evidence, given on affidavit, by N. Ramachandran, representative of CIBA. This is what N. Ramachandran (No. 21) says on the point :

" Shri Desikan was a P.W.D. contractor. Shri R. Seshadri and myself asked him in November 1969, if he could introduce us to someone influential with the Tamil Nadu Government. Shri Seshadri and Shri Jayaraman introduced me to one Shri V. Rajagopal sometime in February, 1970. Shri V. Rajagopal came to Ajantha Hotel where I was staying. After we had explained to Shri Rajagopal, he called his friend Shri Anbil Dharmalingam over the telephone and he came soon after. The matter was further explained to Shri Dharmalingam and he promised to use his influence in this connection. It was during such discussion, the idea of contacting the Aircraft operators engaged in aerial spraying was thought of by Shri V. Rajagopal and he desired Shri R. Seshadri to introduce him to the aircraft operators also." With regard to the charges in question before me, N. Ramachandran can not be said to be an "accomplice". He had nothing to do with the serial spraying contracts in question, nor is he the person who had introduced V. Rajagopal or Shri Anbil to the aircraft operators. He was only an employee of CIBA. Desikan alias Babu (No. 2) did not participate in the discussion that took place with R. Seshadri and N. Ramachandran.

Desikan (No. 2), who later became a partner with 17 per cent share, in Ponnee Agencies was examined by the investigating officer under Section 5A. He has also filed an affidavit in response to the notice/notification issued by the Commission under Rule 5(2). In his statements he has said that he did not participate in the discussion, which took place between Shri Anbil and Rajagopal on one side, and N. Ramachandran and Seshadri on the other. But he gives a full account of that discussion saying that he had appraised of the same, soon after, by his brother, Seshadri. Desikan's evidence was thus of derivative nature. Nevertheless, it lends some assurance to the testimony of V. Rajagopal about that discussion.

It is true that N. Ramachandran (No. 21) has not deposed to the details of that discussion, the remark made by Seshadri and the overt reaction of Shri Anbil. His failure to recapitulate these details was obviously due to the fact that the witness was deposing to events which took place 6 years earlier. Even so, he does confirm the substance of V. Rajagopal's testimony in regard to the facts emerging from the discussion in which Shri Anbil Dharmalingam participated.

(iii) The next evidentiary fact relates to Rajagopal's introduction to C.P. Khemka. With regard to this, Rajagopal has stated :

"Four or five days later. Shri Seshadri came to my Guest House at Madras with Shri Vishwanath of Khemka Aviation Co. He was accompanied by Jayaraman and Desikan.... Shri Vishwanath told me that the Tamil Nadu Government would be inviting tenders for aerial spraying for the year 1970-71, that there would be keen competition; that the operators were desirous of securing contracts at favourable rates..... He asked me whether I would be in a position to influence the Government and the concerned Department with the 'assistance' of Shri Anbil. I said I would consult Shri Anbil and then let them know. Towards the middle of March 1970, Shri Anbil came to Madras. I conveyed to him the gist of the discussion that I had with Shri Vishwanath. Shri Anbil said that he would be able to get the work done, and directed me to arrange for the commission. Later Shri Vishwanathan introduced me to Shri C. P. Khemka, Shri Desikan and Jayaraman were also present. In answer to Khemka's inquiry as to how I would secure for them the contract order, I said that Anbil, my friend, was the District

Secretary of D.M.K. at Tiruchy and was a powerful man of influence, having close contact with Mr. Karunanidhi. I contacted Shri Dharmalingam after this meeting and conveyed to him the desire of the Aircraft Companies that if they got favourable rates, they were prepared to pay commission. He assured me that he was in a position to get favourable rates to the Aviation Companies."

(Pages 11-14 of affidavits and pages 10-11 of the deposition.)

The above account given by Rajagopal has been substantially corroborated by P.V. Vishwanath (No. 22), Jayaraman No. (3), Desikan (No. 2) and C.P. Khemka (No. 4) in their affidavits and also in their statements recorded under section 5-A.

(iv) The next is the two-fold principal fact appearing in the evidence of V. Rajagopal: First, that he negotiated and devised the arrangement to collect commission at the rate of 40 paise per acre, from the Operators, through Ponnee Agencies, at the instance of and with the prior consultation of Shri Anbil Dharmalingam, at every step, and second, that simultaneously, Shri Anbil Dharmalingam was inducing by the exercise of his personal influence, the Chief Minister and Hari Bhaskar to award the contracts at Rs. 9 per acre. The evidentiary facts deposed to by Rajagopal in regard to these twin primary facts; are as follows :—

"(a) Thereafter, I met Khemka on two or three occasions. Mr. S. A. Ramachandran of Helicopter Services was introduced to me by Khemka. During discussion, Khemka and S. A. Ramachandran told me that the rate for the contract to be secured by the exercise of influence with the Government, should be Rs. 9 per acre. I asked 50 paise per acre as commission... but they promised me commission at 40 paise per acre. Later, I conveyed (the result of the discussion), to Shri Anbil Dharmalingam... He assured me that he would get the rate of Rs. 9 per acre approved by Government; but stated that I should pursue the matter in regard to the Commission. I conveyed this talk with Shri Anbil to Khemka."

(Pages 10-12 of the deposition and paras 11-14 of the affidavit.)

(b) "On the 4th May 1970, I and Shri Anbil came to Madras. On the 5th morning, I and Shri Anbil went to the chamber of the Chief Minister, Mr. Karunanidhi, in the Secretariat, Shri Anbil went in and talked to the Chief Minister, while I waited outside. After coming outside Shri Anbil told me that he had met the Chief Minister who had assured him to give the contracts at the rate of Rs. 9 per acre quoted by the Companies, and to instruct the Director of Agriculture accordingly."

(Pages 16, 17 and 18 of the deposition and para 9 of the affidavit.)

(c) "Thereafter, on the same day (5th May 1970), I and Shri Anbil Dharmalingam met Shri Hari Bhaskar, who told us that he had received instructions in the matter, and would, accordingly, issue orders fixing the rate to be given for aerial spraying at Rs. 9 per acre."

(Pages 17 and 18 of the deposition and para 9 of the affidavit.)

(d) "Later, I met Khemka and told him that Shri Anbil Dharmalingam had met the Chief Minister, who had assured Shri Anbil that he would instruct the Director to fix the rate for spraying at Rs. 9 per acre, that... I and Shri Anbil had then met the Director of Agriculture who assured us that he would carry out the instructions of the Chief Minister. I further told Khemka that he should take follow-up measures and that he should pass a letter, as per my draft, agreeing to pay the commission."

(Page 18 of the deposition.)

(e) "In the middle of May 1970 Shri Hari Bhaskar was camping at Tiruch I along with Shri Anbil and Narayanan, met him there (on the 16th May, 1970). Shri Anbil asked Shri Hari Bhaskar to forward the necessary recommendations to the Secretariat, at which level, he would get the work done, i.e., get the rates quoted by the members of the Association accepted by requesting the Chief Minister... Anbil asked me to go to Madras forthwith and promised that he would follow me... Anbil did not come on the following day as promised... On the following morning I went to the Railway Station to check up if he had come. He did not come... I then went to Tiruchy."

(Page 19 of the deposition and page 21 of the affidavit.)

(f) "Since Anbil had many pre-occupations, he could not go to Madras. So... on 19th May 1970 from Tiruchy, Shri Anbil talked to the Chief Minister on telephone, in my presence and hearing, requesting the Chief Minister to get the recommendation from the Director and the Secretary expedited, and the necessary orders passed for allocation of areas at the rate of Rs. 9 per acre. The Chief Minister said that he would get it done immediately."

(Page 21 of the deposition and paras 21-22 of the affidavit.)

(g) "On the following day or so, I reached Madras, and on 20th May 1970, went to the Director's Office, along with Narayanan, and obtained a copy of the order in respect of the allocations made to the members of the Association by the Director of Agriculture. Therefrom, I came to know that 8.5 lakh acres were to be sprayed in Tamil Nadu that year. I then met Khemka and asked him to give back the draft agreement that I had given to him earlier, after getting the same signed by all the Operators. On 29th May 1970, Ex. CW1/5, was executed on stamp paper between the Indian Agricultural Aviation Association and Ponnee Agencies. I had floated this firm (on 7th May 1970) under instructions from Shri Anbil Dharmalingam. This was a partnership concern, with myself, Sarvashri Jayaraman, Desikan, Smt. N. D. Mahalakshmi as partners. Shri Jayaraman and Shri Desikan were to get share of 17 per cent each, and the balance of 66 per cent was to be shared equally by Shri Anbil Dharmalingam and myself. Shri Anbil had told me that his name should not be disclosed in the document to be executed for sharing the commission. Shrimathi Mahalakshmi is a family friend of mine and I introduced her name as a 'dummy' partner in place of Shri Anbil Dharmalingam, for the purpose of meeting the share of Shri Anbil."

(Deposition pages 12-13 and affidavit para 29.)

(h) "Before the agreement (Ex. CW-1/4), dated 29th May 1970, was signed, I received the letter (Ex. CW-1/5) dated 14th May 1970, addressed to Ponnee Agencies, which was signed by Khemka, in my presence, before delivering it to me. This is a copy of which was shown by me to Mr. Anbil Dharmalingam. Khemka collected cheques from the other Operators, and gave to me the last week of May, 1970, on the whole, cheques for Rs. 75,000 towards the advance commission. Khemka told me that I should not encash the cheques till the contracts between the Government and the Operators were concluded. It was a 'gentleman's agreement.'

(Page 23 of the deposition.)

Rajagopal's evidence with regard to facts stated in sub-paragraphs (a), (d), (g) and (h) has to a very large extent, been corroborated by C. P. Khemka in his affidavit and with greater detail in his statement recorded under S. 5-A. Khemka's own evidence finds further confirmation from the letters which he wrote almost contemporaneously with the events to the President or the members of the Association at Bombay. Thus, in his letter, dated May 8, 1970, he *inter alia* wrote to Jehangir Modi and the other Operators:

"I feel it would be advisable for two of you to come down to Madras on the 12th instant so that we can finalise our agreement with the Director of Agriculture's Office. The Director of Agriculture has also intimated me that he can finalise the entire issue as he has been given directions to do so without referring the matter to anyone else. Consider all these points, make up your minds and arrange to intimate me of what is to be done, and confirm if one or two of you can come down to Madras on the 12th instant to finalise everything. When you are here I would like you to finalise the Agency Agreement with M/s. Ponnee Agencies and please note all this is happening is their making.

(Sd.) C. P. Khemka."

He also sent a telegram, dated 8th May 1970, to his head office which was substantially to the same effect.

The portion that has been underlined in the above quotation furnishes independent corroboration of the evidence of Hari Bhaskar, CW-9, that he had been directed by the Chief Minister to finalise the contracts at his own level.

Further confirmation of what Rajagopal has said in the portion (g) is available from Hari Bhaskar's letter No. C.3/8720/70, dated 20th May 1970, informing the President of the Association about the total acreages to be done in 1970-71, and inquiring as to who were the Operators who could take up the work and position the helicopters in the places concerned by 24th May 1970, to commence the spraying from 25th May 1970, adding that the "signing of the agreement, execution of Security Deposit should be completed before 25th May 1970. The letter, Ex. CW-1/5,

dated 14th May 1970, addressed by Khemka to Rajagopal c/o Ponnee Agencies, furnished further reinforcement of the testimony of Rajagopal in the portion (h) and the evidence of Khemka, himself. It reads :

“

Madras 14th May 1970.

Ponnee Agencies,
B-1, First Cross.

I on behalf of the members of the Association offer you the following terms, and conditions :

Commission	40 P (forty paise) per acre.
Payment	Advance 30 per cent on signing of the contract—Balance 70 per cent as and when the work is progressing.

The advance will be paid on effective acreage estimated at 6,00,000, irrespective of the contracted capacity The members of the Association further agree to pay you the commission on the acreage sprayed in the event of area being in excess to the 600,000 acres estimated. This is valid subject to your arranging the Letter of Indent before 16th instant.”

S. A. Ramachandran, CW 4, has also lent support to what is said in the portion (a).

Hari Bhaskar, CW 9, has also corroborated what Rajagopal has stated in the portions (c), (b), (e) and (g) quoted above.

The evidence of Smt. Mahalakshmi (No. 19) lends strong assurance to the evidence of Rajagopal [*vide* portion (g)] about her being a “dummy” partner. She deposed:

“..I state that Shri V. Rajagopal of Uppiliapuram, Tiruchy District is an intimate friend of my brother N. D. Subramanian, and through him is known to me, and therefore, we are family friends.”

2. I state that sometime in the month of April, 1970, the aforesaid Shri V. Rajagopal enquired of me whether I am in a position to invest some money in a firm which he intended to float, by name Ponnee Agencies. I expressed disinclination to make any investment, but since he persisted in his request for financial assistance, I lent him a sum of Rs. 10,000 in cash, which he returned in about nine months' time. No interest was received by me from him. Subsequently I remember, Shri V. Rajagopal telling me casually that he was getting commission from Aircraft Companies engaged in aerial spraying work for getting them contracts from the Tamil Nadu Government. I did not evince any interest since I had no concern with the same.

3. I further state that for no reason apparent to me, the income-tax authorities searched my house in October, 1972. When I made enquires, I came to know that because Shri V. Rajagopal had shown me as a partner in Ponnee Agencies, the Income-Tax Officers suspected that I may have black money and so conducted search. They found nothing in my house. At no time I was a partner of Ponnee Agencies ; nor have I signed any deed of partnership. I have nothing to do with Ponnee Agencies except to the extent stated in para graph (2) supra.

4. I further state that it is not true to say, that the Investigating Officers assisting this Hon'ble Commission had procured my signature on some tutored parrot-like statement under threat, coercion or by other unfair or illegal means. I had given my statement out of my free will and in fact the statement was read over to me and found that the statement was truthfully recorded and in token thereof I had affixed my signature.”

I have carefully examined the admitted signature of Smt. N. D. Mahalakshmi appearing under her statement, dated 9th August 1976, recorded by the Investigating Officer under S. 5-A, and compared the same with what purport to be signatures, “D. Mahalakshmi”, on the partnership deed, Ex. CW-1/1, dated 7th May 1970, whereby Ponnee Agencies was formed. Even to a naked eye, there appears to be a world of difference between the admitted and the questioned signatures. The initial ‘N’ which is a part of the admitted signature of Smt. Mahalakshmi, is missing in the signatures on CW-1/1 which are disowned by Smt. Mahalakshmi. The formation of the letters ‘D’ and ‘M’ in the admitted initials and in the admitted signatures, appearing four times on her statement, dated 9th August 1976, recorded under S. 5-A, is markedly similar. In all these four genuine writings, she has written ‘D’ and ‘M’ in the same style and fashion which is entirely different from that in which these letters have been written in the questioned signatures. The four paged partnership deed bears four questioned signatures, ‘D. Mahalakshmi’, which tally with each other. I am therefore convinced that Smt. Mahalakshmi, in her affidavit, has told the truth that she, in fact, had never signed the partnership deed (Ex. CW-1/1).

In her earlier statement, dated 9th August 1976, also, before the Investigating Officer under s. 5-A, Mahalakshmi has substantially told the same story which she later swore in her affidavit, dated 28th September 1976. According to her, the income-tax authorities, also, during the raid in October, 1972 on her house, did not find any document or evidence showing her connections with or interest in the Ponnee Agencies. There is no good reason why Smt. Mahalakshmi's unrebuted sworn word be not accepted as true. It unmistakably brings out the fact that in the partnership deed, Ex. CW-1/1, she was introduced as a 'dummy', without her consent and participation, and she had no beneficial or real interest, whatever, in Ponnee Agencies. She thus lends sufficient assurance to the evidence of Rajagopal, regarding the fact that she was only a figure-head introduced to cover and conceal the share of the real beneficiary, Shri Anbil Dharmalingam.

Rajagopal's version in (h) with regard to the finalisation of the agreement with the Operators, on 29th May 1970, and the receipt of cheques from the operators towards advance commission on or about that date, fits in with what C. P. Khemka has said in his affidavit and in his detailed statement under s. 5-A. Rajagopal's statement (non-extracted) that he opened an account in the name of Ponnee Agencies and deposited the cheques of advance commission, on being introduced by C. P. Khemka is supported not only by C. P. Khemka, himself, but is also borne out by the records of the Indian Overseas Bank, Esplanade Branch, Madras. The first credit voucher credited in this account is dated 20th June 1970.

Rajagopal's version that there was 'a gentleman's agreement' not to encash these cheques till the contracts between the Government and the Operators were concluded, receives confirmation from the circumstance that Rajagopal made the first withdrawal in the sum of Rs. 29,000 from the amount received by him as advance commission, only on 1st July 1970, i.e., after the contracts had been finalised at the level of the Chief Minister.

The recital in the Partnership Deed, Ex. CW-1/1, is also in line with the story propounded by Rajagopal. The recital is to the effect :—

“that the business of the Partnership shall be for canvassing orders from the Government and individuals for purchase of pesticides...for aerial spraying..engaging the aircrafts from different Companies on commission basis for the said aerial spraying and other activities like nature.”

V. Rajagopal's testimony in regard to the events of the 4th, 5th, 16th, 18th, 19th and 20th May 1970 mentioned by him in the above-quoted portions (iii) (b), (c), (e), (f) and (g) receives significant corroboration from the entries in his Diary, Ex. CW-1/3, of the year 1970. The entries in this Diary appear to have been made by him from day to day, contemporaneously with the events. The entries are cryptic, but they become sufficiently eloquent when read in the light of Rajagopal's statement.

The Diary Entry, Ex. CW-1/3A, is of the date, May 4, 1970, and relates to the facts stated in the portion (iii) (b).
It reads

It reads

" 3 A. M.

Arrival M. P.

Myself & Ramji from
1P to UP 10 A.M. up 12 Noon
Turaiyur Taluk celebration
Muthyalinga & Anbil from
Anbil and myself to Madras by Pandyan Express."

In this entry, "Ramji" possibly stands for 'Jayaraman', M.P. for 'Muthiapalli' and "U.P." for 'Uppliapuram'. The crucial part of the entry is that which is underlined. Taken in conjunction with Rajagopal's statement, it shows that on the 4th May 1970, Shri Anbil and Rajagopal came together to Madras by Pandian Express.

The next Diary Entry, Ex. CW-1/3B, is of the 5th May 1970. It relates to the fact stated by Rajagopal in the portions (iii) (b) and (c). It is to the effect :

“Madras Hari Bhaskar at 1 Noon
CIBA favour
Anbil left to Trichy.”

This entry read along with Rajagopal's testimony seems to indicate four things : *First*, that on the 5th May, Anbil and Rajagopal were at Madras. *Second*, that they met Hari Bhaskar at 1 Noon, *Third* he asked for favour for something which may be read as 'C MA' or 'CIBA'. This word preceding 'favour' is not very legible or decipherable. It can be CIBA, also, because it is

in evidence that 'commission' was being collected from CIBA Company also, through the Ponnee Agencies, in consideration of procuring for them orders from the Government of Tamil Nadu for purchase of pesticides and chemicals used in aerial spraying.

Fourth thing evidenced by this entry is that Anbil left Madras for Trichy on that date.

The Diary Entry, Ex. CW-1/3C, dated 5th May 1970, is also a part of the entry, Ex. CW-1/3B. It evidences that on that date Anbil returned from Madras to Trichy.

The Diary Entry, Ex. CW-1/3D of May 16, 1970, reads :

“Director of Agriculture

Raji went Cochin by Air for
Beemaki Marriage

Bills & Cheque came to Trichy

Leave to M. 11 P.M.
Viswanath, Jayaraman by car fiat.”

Along with this, the proceeding Diary Entry of May 15 1970 may also be seen. The material part of that entry is to the effect :

“Director of Agriculture”

Taken together, these two entries of the 15th and 16th May 1970, lend assurance to Rajagopal's statement (*vide* portion (iii) (e), that in the middle of May, i.e., on the 15th, he along with Jayaraman, went by car to Trichy to see Hari Bhaskar and then, Shri Anbil alongwith the witness, saw Hari Bhaskar who was camping there at Trichy.

The next Diary Entry is Ex. CW-1/3E of May 18, 1970. It says :

“Expected Anbil. Not come

phoned to Anbil	
Started to Trichy	6-10 P.M.
Reached Trichy	10-30 P.M.

I found at Somayapuram C. S. Jayaram Kateheri”

In the context the succeeding Entry, Ex. CW-1/3F of May 19, 1970 may also be seen. It reads :

“Try. Anbil phoned to CM

Hari will go
CM wants tell Chief Secretary
Ramaya posted as S. P.
Final talk before—28th

I came UP 2 P.M.

He is leaving to Ooty.”

Excepting the line “Ramaya posted as S.P.” in this entry, everything in these two entries of the 18th and 19th May is relevant and highly significant. These two entries taken together furnish valuable corroboration of the facts deposed to in Rajagopal's statement (*vide* portions (iii) (e) and (f), and put the credibility of his version, that in his presence, on May 19, 1970, Shri Anbil talked to the Chief Minister from Trichy on phone for inducing the award of the contracts to the Operators at the rate quoted by them, beyond doubt.

The next Diary Entry Ex. CW-1/G of May 20, 1970, reads : “A AIRWAYS ORDERS RECEIVED for Helicopters 8.5 lakh acreages”.

This entry reinforces what Rajagopal has stated in the quoted portion (iii) (g).

In his counter-affidavit, Shri Anbil Dharmalingam has characterised these diary entries and the other documentary evidence, as fabricated. I do not find any basis for this sweeping allegation. It will bear repetition that the Diary Ex. CW-1/3, and other correspondence between the representatives of the Aircraft Operators and their Head Offices or Association, were seized along with their Accounts Books, by the Income-tax authorities in raids in October, 1972. This fact has been vouched by Shri V.V. Badami (No. 1), Income-tax Commissioner, Shri A. K. Suryanarayanan, Income-tax Officer, in their affidavits. After their seizure by the Income-tax Authorities these documents were never returned to the Companies or to Rajagopal or to the persons from whom they were seized. Rajagopal has also testified to that effect. He has also produced

a letter, dated 20th July 1976, addressed to him by the Income-tax Authorities, which bears out this fact. From the income-tax authorities, the records relevant to the case under section 120-B, section 161, I.P.C. were taken over by Shri R. P. Kapoor on 25th February 1972. Shri Rajagopalan, Superintendent of Police whose services are being utilised under section 5A of the 1952 Act, has prepared a chart, authenticated by Shri Kapur, showing the original source of these documents, the dates on which they were seized by the income-tax authorities and the dates on which they were taken over by Shri R. P. Kapur, D.S.P. during the investigation of the criminal case No. RC. 2/73 CIA—instituted on 4th September 1973. It is evident from Shri Kapur's affidavit that this documentary evidence was further taken over by the Investigating Officers assisting the Commission under section 5A. It is therefore very clear that after the seizure of these documents, including the Diary Ex.CW-1/3, by the income-tax authorities on 23rd October 1972, Rajagopal has not been allowed any access to them. Thus, there was absolutely no scope or chance for fabricating this documentary evidence. The Diary entries are very cryptic, laconic and abbreviated, which is a further circumstance speaking in favour of their genuineness.

These entries in the Diary (CW-1/3) and the documents CW-1/1, CW-1/2, CW-1/4, CW-1/5, were all written *ante litem motam*, almost contemporaneously with the events in the natural course of human affairs, and furnish good evidence of an authentic kind. In any case, according to the principle underlying section 157, Evidence Act, they can be used for the purpose of corroborating the evidence of those who made them. Section 157, Evidence Act, dealing with corroboration makes no exception in the case of previous statement of an accomplice; and therefore provided the conditions prescribed therein, that is to say, "made.....at or about the same time" are fulfilled, there can be no doubt that such a statement is legally admissible as corroborative evidence vide *Rameshwar v. State of Rajasthan* [(1952) SCR 377].

Hari Bhaskar also lends support to Rajagopal's evidence in regard to the events of May 1970. Hari Bhaskar has testified that the Chief Minister had called him and given him instructions on the 5th May 1970 when he went to him to explain the position with regard to the tenders received with the note (Ex. CW-9/1), dated 5th May 1970, which he got prepared on that date from Shri Radhakrishna Reddiar, Joint Director of Agriculture (Plant Protection). To quote Hari Bhaskar's words :—

"In the year 1970-71, the tenders were opened by Mr. Radhakrishna Reddiar, Joint Director, Extension. I was away on tour at that time. When I came back, I got a telephone call from Mr. Vaithialingam, Private Secretary, to the then Chief Minister, Mr. Karunanidhi, asking me to meet the Chief Minister. When I asked Mr. Vaithialingam as to what the purpose was, he told me that it pertained to the aerial spraying programme of 1970-71. Immediately, I asked my Joint Director to put up the files with a note (Ex. CW-9/1). From the note (Ex. CW-9/1) I found that the Operators, excepting two—Sanghi and Pushpaka, had asked individually for Rs. 9.25 per acre; whereas Sanghi had asked for Rs. 9 per acre; Pushpaka had quoted Rs. 8 per acre.....The Association had quoted separately Rs. 9 per acre on behalf of its members.....with this note (Ex. CW-9/1). I went and called on the Chief Minister.....The Chief Minister then asked me in presence of Mr. Madhavan (Law Minister), about the details of the aerial spraying programme in Tamil Nadu for that year. I explained the position to him. I said that we had a tentative programme to cover 10 lakh acres with aerial spray and we had suggested that 1.5 lakh acres could be allotted to Pushpaka Aviation for spraying, since they had quoted the lowest rate. The Chief Minister then perused the file and ordered me verbally, that 1.5 lakh acres at the rate of Rs. 8 per acre should be tentatively allotted to Pushpaka Aviation and the rest should be given at the rate of Rs. 9 per acre to the other Operators. He further directed me that the proposals need not be sent to the Government and action to implement his directions be taken at my level".

(iv) Rajagopal has testified :

"(a) "About this time, Shri Khemka informed me that the Agriculture Minister, Smt. Sathyavani Muthu, had called a meeting of the Operators for 4th June 1970, and she wanted to reduce the rate by negotiations. I was much surprised.

(b) Immediately thereafter, I went by air on the 2nd June 1970, to Tiruchirappalli and reported to Shri Anbil Dharmalingam all what I had come to know from Khemka. I further told Shri Anbil Dharmalingam about the cheques for advance commission given by the Operators and the understanding about the encashment thereof, if the rates had been reduced, we could not get any commission. Mr. Anbil said that all the Operators should be advised to attend the meeting convened by the Minister for Agriculture and firmly take the stand that they would not undertake aerial spraying unless the rate was fixed at Rs. 9 per acre, while, in the meantime, Shri Anbil would meet the Chief Minister to make necessary arrangements. He said further that he would meet the Chief Minister and see to it that the rate was not reduced from Rs. 9 per acre.

(Pages 24 and 25 of his deposition and paragraph 25 of his affidavit.)

(c) After this meeting of 4th June 1970, Khemka told me that Smt. Sathyavani Muthu asked for reduction of rate and later offered to give contracts at Rs. 8.25 per acre, but he refused to bring down the rate of Rs. 9 per acre quoted by the members of the Association.

(d) I intimated Shri Anbil of this development when he came to Madras on the morning of the 5th June 1970, and immediately thereafter, I and Anbil went to the Secretariat, Anbil went into the Chief Minister's room. I waited just outside the Chamber. Anbil came out after about two hours and told me "Come along, brother, the matter has been accomplished. After we came outside, Anbil told me that he had informed the Chief Minister even after he (Chief Minister) had accepted that the contracts would be given at the rate of Rs. 9 per acre, the Minister for Agriculture was insisting that unless the rate was brought down, she would not pass the necessary orders of approval. Anbil further said that the Chief Minister immediately sent for the Chief Secretary in Anbil's presence and directed him to call for the file and to see that orders were passed fixing the contract rate at Rs. 9 per acre.

(Pages 26-29 of the deposition and paragraph 27 of the affidavit.)

(e) "After 3 or 4 days of this meeting of Anbil with the Chief Minister, the Director of Agriculture issued fresh orders and awarded contracts to the members of the Association at the rate of Rs. 9 per acre."

(Page 30 of the deposition, paragraph 28 of the affidavit.)'

The facts stated in the portions (iv) (a), (c) and (e) receives corroboration from the statements of C.P. Khemka. They receive further corroboration from the statement of Hari Bhaskar, CW-9, and the official records, letter, Ex.CW-9/3, dated 30th May 1970, Minutes of the proceedings of the meeting held on 4th June 1970, by the Agriculture Minister, in file No. C. 2094/71, Vol. III (Folder No. 17), Ex.CW9/5, Ex.CW-9/6, dated 8th June 1970, Ex.CW-9/7, dated 8th June 1970, etc.

Rajagopal's statement with regard to his dash to Tiruchirappalli and back by air to Madras, in the above portion (iv) (b), receives valuable corroboration from the entries in his diary, Ex.CW-1/3. The Entry of June 1, 1970 in Rajagopal's Diary, Ex.CW-1/3, shows that Rajagopal had arrived in Tiruchirappalli on that date at 7 p.m., and halted at Tiruchirappalli for the night. Thereafter, the Entry, Ex.CW-1/3H, of the following day, June 2, 1970, shows that he had returned from Tiruchirappalli to Madras by 9 p.m. flight.

Then, there is strong, direct and circumstantial evidence to corroborate Rajagopal's statement that it was Shri Anbil Dharmalingam who, by the exercise of his personal influence, induced the Chief Minister to intervene and foil Smt. Muthu's attempt to reduce the contract rate through negotiation.

Shrimathi Sathyavani Muthu, who was the Agriculture Minister at that time, has filed an affidavit, dated 29th September 1976, before this Commission. She was also examined by the investigating officer under Section 5A on 13th August 1976. In that statement (the substance and correctness of which has been reiterated and affirmed by her in her affidavit) under Section 5A, she gave this account :—

"Sometime towards the end of May 1970 I learnt that the Director of Agriculture had awarded the aerial spraying contracts for the year 1970-71 at the rate of Rs. 9 per acre which was not the lowest. As I was not satisfied with the way in which the Director of Agriculture had taken a decision at his level and issued orders without consulting the Minister concerned, I instructed the Secretary, Agriculture (Shri K. Diraviam) to call a meeting of the Operators on 4th June 1970 for negotiations. Accordingly the representatives of the aircraft companies met me. The Secretary, Agriculture and the Director of Agriculture (Shri N. Hari Bhaskar) were also present. I told the representatives of the Aviation Companies that it was an intention of the Government to deal with individual firms and not with an Association. I plainly told them that the rate of Rs. 9 per acre quoted by them was very high when compared to the rate of Rs. 5.98 per acre allowed during the previous year. I also pointed out the rate of Rs. 8 per acre quoted by another firm, namely M/s. Pushpaka Aviation who was not a member of the Aviation Association. After detailed discussion I offered to sanction a rate of Rs. 8.25 per acre. I told them that this rate of Rs. 8.25 per acre was final and such of those Operators who were willing to accept this rate may contact the Director of Agriculture for further instructions. Accordingly I recorded a note on the file and marked the file to the Chief Minister (Shri M. Karunanidhi) for approval.

"This file came back to me with a note recorded by the then Chief Secretary (Shri E. P. Royappa) that a rate of Rs. 9 per acre had been accepted for the individual Operators and a rate of Rs. 8 per acre quoted by M/s. Pushpaka Aviation had been sanctioned to them. I was much upset on seeing this note as I had issued clear instructions at the meeting held on 4th June 1970 to my officers that a rate higher than Rs. 8.25 per acre was not acceptable to the Government. When I asked the Chief Secretary about it he told me that the rate of Rs. 9 per acre mentioned in his note was decided upon by the Chief Minister himself and he had only recorded orders of the Chief Minister. I have now scrutinised the file G. O. No. 2517 of the Agriculture Department and I find that my minute, dated 4th June 1970 regarding the proceedings of the meeting held in my chamber and the noting of the Chief Secretary referred to above and the decision taken thereon by the Chief Minister, are missing. It is most significant that after the note, dated 4th March 1970 there is a long gap in the note file and the next note seen in this file is dated 18th August 1970. It is my belief that some of the incriminating notings having a bearing on the decision taken by the Chief Minister accepting rate of Rs. 9 per acre demanded by the Aviation Association, have been removed from the file and destroyed. Subsequently I learnt that the Chief Minister passed orders sanctioning a rate of Rs. 9 per acre on the intervention of Shri Anbil Dharmalingam who had an interest in M/s Ponnée Agencies which had entered into an agreement with the Aviation Association to get the rate demanded by them sanctioned by the Government for a certain commission. Although I was fully aware that the orders were issued under instructions from the Chief Minister I made a complaint to him regarding the manner in which my orders were counter-manded. The Chief Minister listened to me patiently and told me in a calm manner that he would look into the matter."

In her affidavit she has reiterated everything material which she had said in her statement under Section 5-A. In her affidavit, she says, she could not give all the details which she had given in her statement under Section 5-A. The reason for this given by her is that at the time of her examination under Section 5-A, she had examined the official records which were not before her at the time of making the affidavit. Even so, her two statements are so consistent with each other.

In para. 6 of her affidavit she has given the same reason which she had mentioned with greater clarity in her statement before the investigating officer under Section 5-A as to why she signed Shri Royappa's office note containing the proposal contrary to her proposal which she had openly announced at the meeting with the Operators on 4th June 1970. She has averred in the aforesaid paragraph; "As the rate was increased without my knowledge, I called the Chief Secretary to my chamber when he informed me that the rate was increased as per the Chief Minister's instructions. I was naturally hurt at this development. With this information I signed the file and returned it to the Chief Minister." In his affidavit, dated 19th September 1976, filed on 20th September 1976 Shri Karunanidhi has not said anything against the truth of her statement which she made before the investigating officer under Section 5-A, despite the fact that he had, through his Counsel, not only inspected the investigation report but got it copied verbatim by the 4th September 1976. By an earlier order made in August 1976, the Respondents were specifically invited to say what they might have to say, with regard to these investigation reports, including the statements of the witnesses recorded therein. Although they raised legal objections to the admissibility of the investigation reports, the Respondents did not say anything specifically against the correctness of the statements recorded under Section 5-A or their veracity. However, a general objection was taken that by the use of unfair means, such as, coercion, tutoring, threat, etc., the investigation officers had procured statements/affidavits from the witnesses. Consequently, by my order dated September 20, 1976, I called for Shrimathi Sathayvani Muthu and seventeen other persons to file affidavits in respect of this allegation. They were invited to say whether or not their statements were procured by use of such unfair means by the investigating officers. In respect of this aspect of the matter, in paragraph 12, of her affidavit, Shrimathi Sathyavani Muthu has stated :

".....it is not true to say that the Investigating Agency of the Commission had procured my signature on some tutored parrot-like statement under threat, coercion or by adopting other unfair illegal means. As a citizen it is my duty to bring to light the facts within my knowledge touching upon matters of importance and therefore when the Investigating Officer met me with the relevant files, I went through the same and voluntarily gave my statement..... The statement was read by me and found to be correctly recorded. Therefore, I signed the statement."

Prima facie, therefore, there is no reason why her statement should not be believed. The apparent inconsistency in her conduct in quietly signing Shri Royappa's note containing a contrary proposal to what she was propounding, finds explanation in the simple fact that she did not want to make it an issue between what she thought proper and what the Chief Minister willed, and precipitate the matters.

The extra-ordinary manner and the tell-tale circumstances in which Shri Royappa's note, dated 5th June 1970, Ex. C.W. 6/2, was put up post haste, also supplies independent corroboration, to the version of Rajagopal that this proposal was induced by Shri Anbil Dharmalingam by the exercise of his influence with the Chief Minister. The note, Ex. C.W. 6/2, reads as follows :—

“In yesterday's meeting before the Minister (Agriculture and Harijan Welfare) an offer of Rs. 8.25 per acre was made to individual firms as last year they have done the work at Rs. 5.98 per acre.

During my discussions with the Secretary, Agriculture, Secretary, Law and Director of Agriculture, it was agreed that the offer of Rs. 8.25 per acre will have the following draw backs :—

(1) It is likely that the entire programme of aerial spraying may be delayed adversely affecting food production; and

(2) There is the possibility of the Government being dragged to court particularly as the acceptance and withdrawal of the offer to the Association by the Director of Agriculture is not free from legal lacuna.

On the other hand, if the rate of Rs. 9 per acre is offered, there is no likelihood of the Association or its members taking the matter to the court as the figure Rs. 9 has been quoted by the Association itself and entire programme of aerial spraying will be implemented in time without hitch.

To sum up, it was unanimously agreed that the following courses may be adopted :—

(1) The acceptance of the tender of Pushpaka Aviation (P) Ltd., at Rs. 8.60 per acre for an extent of 1.5 lakh acres may be approved ;

(2) The Director of Agriculture should reject all the other tenders ; and

(3) A fresh offer may be made quoting Rs. 9 per acre to individual firms and the Director of Agriculture may allot the acreage according to the capacity of the individual firms who may accept this offer of Rs. 9.”

The Chief Secretary marked the above note to the Agriculture Minister, and the Chief Minister through the Secretary, Agriculture (Shri Diraviam) who merely put his initial in the margin. The Agriculture Minister, Smt. Muthu and the Chief Minister, Shri Karunanidhi both signed it on 8th June 1970, in token of approval of the proposals to accept the tender of Pushpaka Aviation at Rs. 8 per acre for an acreage of 1.5 lakhs and to offer Rs. 9 per acre to other individual concerns who might be allotted acreage according to their capacity.

According to Rajagopal's derivative statement the proposal in this note (Ex. C.W. 6/2), was put up by the Chief Secretary, Shri Royappa, in obedience to the peremptory orders requiring immediate compliance verbally given to him by the Chief Minister.

Before I comment on this note and the circumstances in which it was put up, it would be worthwhile to notice here the other evidence bearing on the point.

In regard to this aspect of the matter, Vaithialingam, C.W. 8, has testified :

“Earlier in June 1970, I received a very peculiar note from Thiru E. P. Royappa the then Chief Secretary of Tamil Nadu Government, suggesting that the aerial spraying work could be given to the Aviation Association at Rs. 9 per acre and to the Pushpaka Aviation at Rs. 8 per acre. I distinctly remember that it was not routed through the Secretary, Agriculture, nor through the Minister for Agriculture.”

After seeing the note, Ex. C.W. 6/2, the witness continued :

“Immediately after sending the note, through a messenger, the Chief Secretary phoned up and told me that the Chief Minister had given him instructions to prepare a note in a particular fashion and he (Chief Secretary) had sent an important note to get the orders immediately. On seeing the note, I found that the then Secretary, Agriculture, Mr. Diraviam, to whom he had marked, had not seen the note at all. I sent the file through a messenger to Thiru Diraviam, the then Agriculture Secretary and asked him to get the approval of the Minister for Agriculture immediately.”

The above statement of Vaithialingam receives support from that of Hari Bhaskar who has stated that on 4th June 1970 in the evening "I received a telephone call from Mr. Royappa, the then Chief Secretary asking me to send the files pertaining to aerial spraying-contracts directly to him. I immediately complied with that order. I sent the files the same day. The next morning, Mr. Royappa asked me to meet him. I met him in his chamber and I explained to him the background of the initial order as well as what transpired in the room of the Minister of Agriculture, at the meeting with the Operators. He then told me that he had instructions from the Chief Minister to intervene and see that the contracts at the rate of Rs. 9 per acre, were awarded to the Operators who were members of the Association."

Shri Diraviam (No. 34) the then Secretary, Agriculture in his affidavit, has first referred to Smt. Muthu's efforts to reduce the rate to Rs. 8.25 per acre at the meeting with the Operators and the latter's firm stand not to agree to the same. The witness "also an indication that they were taking the question at higher levels". Thereafter, the witness refers to the discussion, he had with Shri Royappa on 5th June 1970. During this discussion, the witness "pressed the view that the earlier lower rates accepted by the Minister for Agriculture should be offered" but the Chief Secretary pointed out "that this might lead to complications". The Chief Secretary himself dictated the note (Ex-CW 6/2) "not on the main file but in a separate single sheet of paper". The witness did not recollect and doubted, whether this note was sent to him by the Chief Secretary before circulation. He raised this doubt "because in the normal course, if the note had been marked to me, I would have subscribed to the circulation note either by signing in full, or added a note expressing my views". That such was not the case here, the witness noted: "I see from the papers that I have only initialled it on 6th June 1970 in the margin as evidence of having seen the note, but, that I have not actually added my full signature to the circulation note".

Thus, by pointing out this procedural peculiarity about the note, CW 6/2, the witness lends indirect support to what Vaithialingam has said about it.

Under my orders, a notice was served on Shri E. P. Royappa calling upon him to file an affidavit in regard to the circumstances within his knowledge in which he had put up the note Ex. CW6/2, dated 5th June 1970. He filed an affidavit on 16th October 1976. In that affidavit he indicated that he was not able to give all the facts fully as he would have liked to give for the reason that all the records had not been shown to him and that he was filing that affidavit after perusing the copies of the deposition of Mr. Vaithialingam and Mr. Vedanarayanan and Volume I of the Investigation Report of the C.B.I. relating to his charge and the news papers reports relating to evidence given before the Commission. In this affidavit, he has criticised the evidence given by Hari Bhaskar and Vaithialingam in scathing, satirical and sardonic terms. According to him, the witness Vaithialingam has no respect for truth. He has told "deliberate falsehood" in saying that the witness had sent the file to him and had phoned that he (Vaithialingam) should get immediate orders of the Chief Minister. He has alleged that Vaithialingam was inimically disposed towards him because the witness had filed a writ petition in the Supreme Court against Shri Karunanidhi and some Ministers making serious allegations of maladministration and misrule and "Mr. Vaithialingam was also one of the chief targets of my attack" in that writ petition. In that writ petition he had *inter alia* stated that "a diabolical plot was hatched by Dr. Karunanidhi in collusion with Mr. Madhavan, Law Minister, to give a higher seniority to Vaithialingam to enable him to be included in the I.A.S."

Ridiculing Hari Bhaskar's statement, Shri Royappa has stated that as Chief Secretary he would not be so stupid as to waste his time to phone up to his junior subordinates like Mr. Hari Bhaskar, Director of Agriculture and then tell him that he had been asked by the Chief Minister to intervene and see that the contract was awarded to the Operators at the rate of Rs. 9 per acre. He has stigmatised Hari Bhaskar as one who "had been negotiating bribes for the Minister and Chief Minister thereby disgracing the Indian Administrative Service".

He also had a fling at Vedanarayanan that he was sailing in the same boat with Vaithialingam.

As regards Smt. Sathyavani Muthu, he has stated that there were serious allegations of corruption against her in awarding contracts for building motor boats. The witness had written a scathing criticism while reviewing the progress of motor boats building contracts. It was well known that "she considered me as her bitterest enemy".

Thereafter, Shri Royappa smarting under a sense of grievance, as it were, has stated:

"I have sacrificed my all beyond the call of duty to wage a lone battle against the then corrupt and goonda regime of the D.M.K. Ministry while in its height of power by filing a Writ Petition in the Supreme Court directly, alleging corruption maladministration and misrule, thereby placing my life and that of my dear ones in great peril."

He then sets out how he was shifted from the post of Chief Secretary to Deputy Chairman, State Planning Commission and how "after all the unbearable physical and financial sufferings and mental agony that I have gone through after filing the Writ Petition in the Supreme Courtand after resigning from the highest post of Chief Secretary to Government "on grounds of conscience". He adds "it is the unkindest cut of all for the three I.A.S. Officersto have mischievously dragged my name".

Thereafter he has made same disparaging remarks against some other officials.

A reading of his affidavit reveals him a frustrated, bitter man obsessed with the belief that everybody is out to persecute him. But in spite of his castigating, searing outpourings, he did not answer the point of substance. I therefore had to make another order directing him to answer clearly, the specific pointed questions sent to him. It was further intimated that he could inspect all the official records which were then within the control and custody of the Commission pertaining to this allegation before filing his supplementary affidavit. He then filed a supplementary affidavit after examining all the records. In this affidavit, also, Shri Royappa has not given straight and clear-cut answers. He still complains that there must have been some other papers in the official files showing what led him to him to the putting up of the note CW 6/2. In this connection he has cited only one specific instance. viz. :

"Even assuming that I have dictated the note in a separate single sheet of paper, since my noting was marked to the Secretary, Agriculture and thereafter to the Minister for Agriculture and the Chief Minister, these should have been made part of the main file by the Secretary, Agriculture and not finding it so now, leave room for considerable suspicion and speculation leading to the irresistible conclusion that the files now presented before the Commission do not represent an accurate picture of the state of files when these events took place."

In paragraph 5 of the supplementary affidavit, he has stated :—

".....it will not be humanly possible for me or anyone else placed in my position to recollect after six years and four months and to fill in or substitute the information or details that had been deliberately tampered with or altered or removed or destroyed in one among the lakh of files that had passed through me."

He has further admitted that this note, dated 5th June 1970, Ex-CW 6/2, bears his signature and must have been typed either to his dictation or under his direction. He has further admitted that the corrections in this note are in his hand.

His answers to some other questions served on him are as follows :—

Question.—The opening paragraph of this note says that there was a discussion between the Secretary, Agriculture, Secretary, Law, and yourself.

(a) Was this note the result of that discussion ?

(b) Will you kindly state who was then the Secretary, Agriculture and the Law Secretary who are stated to have participated in the discussion ?

Answer : (a) The noting itself gives the reasons for arriving at the unanimous discussions at the Conference and at the end sums up the unanimously agreed recommendations.

Question (v). —At whose instance the said discussion between Secretary Agriculture, Secretary Law and yourself took place ?

Answer.—For the reasons given in paragraph 5 above, it will not be possible for me to answer this. (In paragraph 5, he had stated : ".....it will not be humanly possible for me.....to recollect after six years and four months.....").

Question (vi).—Were you asked by the Chief Minister himself or through his Private Secretary to put up this note ?

Ans : "Same as for question (v) above."

A bare perusal of Shri Royappa's Note, Ex. CW 6/2, shows that it is a self-contained note, which originated at the level of the Chief Secretary as a result of his discussion with the Secretary Agriculture, Secretary, Law and Director of Agriculture. There is no reference in it to any noting of the Director of Agriculture, or Assistant Secretary, Deputy Secretary or Secretary to the Government in the Department of Agriculture. It is conspicuous by the absence of any reference to any other office noting. The note itself shows that how and where it originated. Royappa's excuse, therefore, that he was unable to answer the specific questions served on him satisfactorily, because he could not refresh his memory from other connected papers, allegedly

removed from the record, it is not sustainable. He has given only one specific instance of such missing record, namely, the minute of the meeting held by Smt. Sathyavanimuthu, Minister for Agriculture, with the Operators on 4th June 1970. This too, is not correct. Hari Bhaskar has stated that under his direction, the Joint Director, Radhakrishna Reddiar, who had also attended the aforesaid meeting had prepared the minute, Ex. CW 9/5, of the proceedings. Had Shri Royappa asked for inspection of this minute (Ex. CW 9/5), it could have been made available to him.

While Shri Royappa blames his inability to give full and clear answers to the specific questions put to him, on fallible memory, the matter being more than six years and four months old, he clearly remembers that "aerial spraying file passed through me once only", although that too, was an event nearly "six years and four months old". This admission not only reveals the unsoundness of the reason given by Shri Royappa for not answering clearly the questions put to him but also amounts to an admission that the initiation of this note by the Chief Secretary (Shri Royappa) in a matter which normally should have originated from the Director of Agriculture and routed to the Government through its Secretary in the Department of Agriculture, was itself a very extraordinary and unusual thing.

It appears to me that Shri Royappa has taken shelter behind fallible memory as an excuse for not giving forthright answers to the questions addressed to him by the Commission. At the time when he put up this note (CW 6/2) which is manifestly peculiar from the procedural point of view, he appears to be enjoying full confidence of the then Chief Minister. The very fact that he was selected for holding the highest executive post under the Government superseding 8 of his seniors, including an officer of the I.C.S., is presumptive proof of that fact. Subsequently, he fell from grace. He was shifted from his prestigious post to that of Deputy Chairman, State Planning Commission. He was deeply hurt. He filed a writ petition in the Supreme Court to challenge this action of the D.M.K. Government. He lost that case. He would have been in an embarrassing position now to have straight away confessed that he had put up this note against his better judgement under the dictates of the Chief Minister. Indeed, that would have been a ridiculous situation for him. It seems, perhaps, that was why he thought it best to keep that fact closely interlocked in his bosom.

Nor am I prepared to accept Royappa's version that Hari Bhaskar and Vaithialingam have told 'deliberate falsehood' in regard to what was communicated by Royappa to them in respect of this matter. As already seen, Diraviam has supported Vaithialingam regarding the peculiarity of this note, Ex. CW 6/2. Then the note itself speaks about the discussion with Hari Bhaskar. Its contents themselves indicate that it was born at the level of the Chief Secretary.

As will be presently discussed, the reasons given in the note in favour of the proposals are incorrect and the circumstances suggest that Shri Royappa was conscious about their incorrectness.

I will revert to that aspect of the matter after noticing the stand taken by Shri Karunanidhi in his counter-affidavit.

In line with Royappa, Shri Karunanidhi in his counter-affidavit, dated 19th June 1976, filed on 20th June 1976, stated:

"...as Chief Minister, I was not in touch with routine office work or administrative actions taken by the officers from day to day...Inviting tenders, opening tenders, processing of tenders received, setting of spraying rates, allocation of spraying areas to operators and the like were all left to the concerned officers. The aerial spraying programme was dealt with on an emergency footing. The officers took decisions and obtained *ex post facto* approvals. Whatever matters were put up by them for consideration and approval of Ministers were naturally discussed with them. We were guided by office notes and explanations. These well accepted norms of official procedure cannot be ignored."

Again in paragraph (8) he has stated :

"It is seen that in 1969-70, on account of keen competition among the air-craft operators they had made competing bids and the rate was fixed at Rs. 5.98 per acre as hire charges. It is also seen that the operators who agreed for the low rates and executed agreements defaulted on a major scale after moving the Government for enhancement. The firm that quoted the lowest rate proved to be the worst defaulter among them."

"9. In 1970-71 they became wiser and joined together except for Pushpaka Aviation and formed an association. This association... came to a decision to make the tender at the uniform rate of Rs. 9. The Pushpaka Aviation quoted Rs. 8. the Director of Agriculture negotiated with the operators for reducing the rate. The individual members had quoted Rs. 9-50. The association had quoted Rs. 9. The Director of Agriculture appears to have reduced the rate to Rs. 9 which was accepted by them."

"It has to be remembered that the spraying operations have to be completed over vast areas within a period of 3 or 4 months. Therefore the solitary firm that quoted Rs. 8 and who at that time still did not have aircraft, could not be entrusted with the entire spraying work. Several operators had to be engaged. Thereafter, the Director of Agriculture duly allotted spraying areas to the operators. All this was done under the Agricultural Emergency Programme at the official levels as described in the files. I find that later *ex post* approvals were obtained. This approval is signed not only by me but also by the then Agriculture Minister Smt. Sathyavanimuthu. After the Director of Agriculture had approved the tender rate at Rs. 9 and also communicated the order, Thirumathi Sathyavanimuthu convened a meeting of the Operators on 4th June 1970—and tried to fix the rate at Rs. 8.25. But the operators would not agree to a reduction, especially as there was already the acceptance made by Thiru Hari Bhaskar. Nor was there any choice for the Government."

Shri Karunanidhi has further argued in his affidavit that since, no mention is made of the alleged meeting between Hari Bhaskar and the deponent and the Law Minister and the understanding of the deponent's wishes in the file particularly in the note (Ex. CW 6/2), "the statements of Hari Bhaskar are false".

In Paragraph 11, the deponent has summed up his plea, thus :

"From the above it is seen that there were two factors involved :

(i) Thiru Hari Bhaskar had presented a *fait accompli* by his acceptance of the rate. Obviously this is the reason why he is shying at it now.

(ii) the operators had formed a combine and the Government had no choice as they were the only operators available. The operators needed no extraneous influence to get their rates accepted. It is idle to pretend that the operators did not know their strength. The story that I was influenced to get the rates accepted at Rs. 9 stands discredited in the light of the records.

Regarding the question of the price fixed for 1970-71 was Rs. 9/- I most respectfully submit that from the analysis of the cost and the problem that faced the Aviation Companies this price was reasonable and by no means excessive."

Thus, Royappa and Shri Karunanidhi both appear to be justifying the proposals in the note Ex. CW 6/2, on the ground that Hari Bhaskar had presented them with a *fait accompli* by communicating the acceptance of the rate of Rs. 9 per acre to the Operators who were members of the Association, and any attempt by the Government to award a reduced rate thereafter, was not advisable, as such a course would have involved the Government in litigation at the instance of the Operators.

It is true that Hari Bhaskar took a tentative decision on 11th May 1970 and in furtherance thereof wrote letter, dated 20th May 1970, issued under the signature of the Joint Director on 21st May 1970, to the President of the Operators' Association, Bombay. The last paragraph of this letter has been extracted by me earlier. Here it will be useful to reproduce the preceding part of this letter, also :

"Sir,

Subject :—Agriculture—Plant Protection—Aerial Spraying on Paddy and Groundnut in Tamil Nadu during 1970-71—Execution of work—Regarding.

Individual firms and the Indian Agricultural Aviation Association, Bombay have quoted a rate of Rs. 9 per acre for undertaking the aerial spraying work in the State with helicopter during 1970-71.

It is proposed to cover an area of 8.5 lakh acres on paddy and groundnut during 1970-71. The tentative schedule and the names of the Agricultural divisions are furnished below,—

Paddy	..	July to December.
Groundnut	..	May to September.
Cotton	..	November to January.

The aerial spraying on Groundnut is to be taken up immediately in Periakulam Agricultural Division in Madurai District and Pollachi Agricultural Division of Coimbatore District. The details of acres to be taken up are :—

<i>Agrl. Divn.</i>	<i>Area.</i>	<i>Period of Spraying.</i>
(1)	(2)	(3)
Periakulam	6,456 acres (net) (2 rounds)	.. From 25th to 30th May 1970.
Pollachi .. ..	.. 10,000	.. From 25th May 1970."

A perusal of this letter would show that therein, Hari Bhaskar did not specifically say that the rate of Rs. 9 per acre quoted by the individual firms and the Indian Agricultural Aviation Association, Bombay for undertaking spraying with helicopters, had been accepted. He simply recited the fact that this was the quotation of the Operators. Then, in the last paragraph of this letter (extracted earlier), he has clearly invited the Operators to intimate as to who were willing to take up the work and position their helicopters at the places mentioned to commence spraying from 25th May 1970. In the last sentence, he made it clear that before they could commence work, they had to make the security deposit and execute the contract agreements.

Thus, the matter was still in an inchoate, executory stage. No formal contracts had been signed. No work allocation Orders had been issued. No enforceable contract had yet come into existence. Those who propounded or approved the proposals in the note, Ex. CW 6/2, must have known that under Article 299 of the Constitution, the State could not be saddled with liability unless formal contracts were executed between the Operators and the Government in the manner required. According to the said Article, if a contract between the Government and another person is not so executed in the name of the Governor of a State on one side, and the private person on the other, it would be no contract at all in the eye of law and neither the Government nor the other party interested could enforce it—see *K.P. Chaudhry V. State of Madhya Pradesh* (1966)3, SCR 919 and *Mullam Chand V. State of Madhya Pradesh* AIR 1968 SC 1218.

Then there is Article 166 of the Madras Financial Code which provides;

"No work which is to be executed under a contract should be started unless the contractor has signed a formal written agreement."

In view of the above, the reason given in the note, Ex. CW 6/2, was wholly illusory. The apprehension expressed therein by Royappa was not well-founded. Further more, if Hari Bhaskar had taken the decision, dated 11th May 1970, purely, on his own, without the previous approval or direction of the Chief Minister and had thus confronted the Government with a *fait accompli*, leaving them no alternative but to give the contract to the Operators at a rate higher than what Smt. Muthu attempted to fix through negotiations, the natural conduct of the Chief Secretary and the Chief Minister, as good administrators and disciplinarians, should have been to take Hari Bhaskar to task. But as the facts stand, not even his explanation for this alleged misconduct, was called. This omission lends credence to the version of Hari Bhaskar that in issuing the communication, dated 20/21st May 1970, he was not acting on his own, but under the verbal directions of the Chief Minister, Shri Karunanidhi, that the former should award those contracts at his own level without further reference to the Government. This fact as to why Hari Bhaskar so acted, must have been in the knowledge of the Chief Secretary, Shri Royappa, not to speak of the Chief Minister, who was of course fully conscious of it. Hari Bhaskar's version that he had even after receiving those verbal instructions from the Chief Minister, consulted the then Agriculture Secretary and the Finance Secretary before issuing the communication, dated 20/21st May 1970 (CW 9/2) is supported by his pencil noting on the official record. It has already been seen that even the Operators and their representatives knew that Hari Bhaskar had been directed from above to settle the contract rates with the Operators at his own level; vide, letter, dated May 8, 1970, addressed by Khemka to J. R. Mody, President of the Operators' Association, extracted earlier.

The evidence of Hari Bhaskar and Vaithialingam as also the derivative evidence of Rajagopal to the effect, that the Chief Secretary, Shri Royappa short circuiting the normal procedure, post-haste sent for the file from the Director of Agriculture and put up this note, Ex. CW 6/2 under the peremptory orders of the Chief Minister, receives reinforcement from the inference suggested by the peculiar attendant circumstances and unusual features of this note, which have been pointed out by Vaithialingam, Hari Bhaskar and Diraviam, or are otherwise appariant from it.

I have already pointed out at a preliminary stage of this dissertation that according to the rules of practice and prudence, a serious effort should have been made to reduce the rate quoted by the Operators through negotiation, particularly in view of the fact that one of the Operators, Pushpaka

Aviation had offered to do the same work at Rs. 8 per acre. Such negotiations in the ordinary course should have started at the level of the Director of Agriculture and continued at the level of the Secretary and the Minister for Agriculture. Instead of pursuing this course, dictated by propriety and practice, Shrimathi Muthu's rightful efforts to reduce the rate to Rs. 8.25 per acre through negotiations, were thwarted and scotched, by the paramount intervention of the Chief Minister through the instrumentality of the Chief Secretary, Royappa. The conclusion is therefore inescapable that the Chief Minister, Shri Karunanidhi acted in this extraordinary fashion with undue celerity against the norms of propriety and established procedure because he was induced by the influence of his friend and partyman, Shri Anbil Dharmalingam, to do so for ensuring the award of the contracts to the Operator-members of the Association at the rate of Rs. 9 per acre. There is no firm evidence to show beyond doubt that in making this particular Order, dated 8th June 1970, on this note Ex. CW 6/2, Shri Karunanidhi was actuated by any motive of pecuniary gain to himself. It is in evidence that these orders were communicated by Shri Diraviam on phone to Hari Bhaskar on 8th June 1970, soon after they were passed. Hari Bhaskar communicated the same further to the Operators.

The effect of the issue of these orders on the arrangement to receive the 'commission' from the Operators is stated by Rajagopal in these words :

"(V) I conveyed the information about the issue of the Orders for giving contracts at Rs. 9 per acre to the Operators. About a week or ten days after the receipt of the Order Khemka rang me up and informed that I could encash the cheques (that I had received earlier by way of advance commission). This advance commission of about Rs. 75,000 was calculated at the rate of 12 paise per acre for an approximate acreage of eight lakhs. Thereupon, myself and Shri Jayaraman met Shri Khemka, who introduced me to the Manager of Indian Overseas Bank, Esplanade Branch Madras. On his introduction we opened an account in the name of Ponnee Agencies and deposited the cheques in that account. On 1st July 1970 I withdrew Rs. 29,000 from the Bank by cheque bearing No. B. 468853 (Ex. CW. 1/Z) which has been signed by my partner Jayaraman and myself. After withdrawal, I took the money to the Guest House and told Anbil that I had encashed the cheque for Rs. 29,000. Before going to Tiruchirappalli on the night on that day, Anbil told me that he wanted Rs. 20,000 and took it from me in 100-rupee currency notes while we were in my bed room.

(b) This amount was paid to him because he was a *benami* partner in Ponnee Agencies and Smt. Mahalakshmi was a 'dummy' partner or benamidar for Anbil.

(c) He had received various amounts from me thereafter and I had also to incur expenditure on his behalf. The payments made to Anbil within the period ending December, 1970 add up to Rs. 40,000."

(Pages 23, 30-32 of the deposition paragraphs 31 and 32 of the affidavit.)

The material facts in this portion (V) (a) receive corroboration from the records of the Bank. The cheque, Ex. CW 1/Z, shows that on 1st July 1970 Rajagopal had withdrawn a sum of Rs. 29,000 from the Bank. There is nothing to show that Rajagopal invested this huge amount elsewhere. The fact, that on 1st July 1970, Rajagopal had a cash amount of Rs. 29,000 in hand which he had withdrawn from the commission account of Ponnee Agencies, goes a long way to stamp Rajagopal's version viz., that he had, out of it, paid Rs. 20,000 in cash to Shri Anbil Dharmalingam, with truth.

Khemka, as already discussed, has corroborated Rajagopal that he had introduced Ponnee Agencies to the Bank and that the Operators had paid about Rs. 75,000 in cheques towards the advance commission to Rajagopal on 29th May 1970, with the understanding that the cheques would not be encashed till after the contracts were finalised. The date, 1st July 1970, in the context assumes significance. It falls well after the finalisation of the contracts of 1970-71, consequent upon the orders dated 8th June 1970, of the Government.

Evidence has been collected which shows that Shri Anbil Dharmalingam had made a fixed deposit of Rs. 10,000 in the Co-operative Central Bank, Tiruchirappalli, in the name of his minor son, Poyyamozhi, on 7th August 1970, that is, about one month and 7 days after the said payment, which, according to Rajagopal, was made to Shri Anbil. On 30th September 1970, Shri Anbil made two more deposits of Rs. 10,000, each, in the same Bank (vide the statement of Bank Accounts. (Ex. CW 11/4-28). Although Shri Anbil Dharmalingam and his co-respondents were asked to give their comments with regard to the evidence collected/recorded by the Investigating Officers under section 5A he has not despite inspection-cum-copying of the investigation reports, given any explanation as to what was the source of these amounts which he deposited in the Co-operative Bank Tiruchirappalli. In the absence of any such specific rebuttal, the circumstance that only a month and 7 days after the alleged receipt of Rs. 20,000 from Rajagopal, he deposited Rs. 10,000 in the name of his minor son, Poyyamozhi, further strengthens Rajagopal's version regarding the payment of Rs. 20,000 by him on 1st July 1970 to Shri Anbil, towards the latter's share of the commission collected from the Operators.

Rajagopal's version [in the portion V (c)] with regard to further payments of the total amount of Rs. 20,000 towards commission to Shri Anbil during the year 1970, has not been corroborated by any specific documentary evidence. The Bank records, no doubt, show that on September 30, 1970, also, Shri Anbil had made two deposits in the Co-operative Bank, Tiruchirappalli, each in the sum of Rs. 10,000. But Rajagopal has not *specifically* deposed to the payment of any amount to Shri Anbil between the period, 2nd July 1970 to 30th September 1970.

I am therefore, inclined to think that while the receipt of Rs. 20,000 on 1st July 1970 by Shri Anbil Dharmalingam from the Operators, through Rajagopal, towards Shri Anbil's share of the commission collected from the Operators as a reward for procuring for the Operators the aerial spraying contracts of 1970-71, has been established, it has not been shown beyond all shadow of doubt, that after 1st July 1970, also in the year 1970, Shri Anbil Dharmalingam received any further sum, in cash, from the Operators through Rajagopal, towards his share of the commission.

Rajagopal, CW 1, has further stated :

"(VI) Later, about Rs. 44,000 was paid by the Operators in one lump-sum at Bombay either in April or May 1971. On return from Bombay, I told Mr. Anbil and showed him the bank draft for Rs. 44,000. He said that since I had spent on his Elections, I could keep the whole amount. Desikan and Jayaraman were each paid at the rate of 17 per cent and the remaining amount was appropriated by me."

Rajagopal's version to the extent that subsequently, he collected Rs. 44,000 from the Operators in one lump only, in April or May 1971 has been confirmed by Jayaraman. The accounts of the Operators also show that in the first week of May 1971, they settled the arrears due to Ponnec Agencies. However, Rajagopal's further statement that on receiving this Bank Draft for Rs. 44,000, he had shown/presented it to Shri Anbil Dharmalingam and the latter allowed him to keep the entire amount, himself, in consideration of the fact that Rajagopal had spent a good deal in the election of Shri Anbil that had taken place in February 1971, is not corroborated by any independent evidence.

To sum up, Rajagopal's statement with regard to the events of the year 1970-71 has been sufficiently corroborated in material particulars to the extent indicated above, by cogent and convincing evidence furnished by the entries in his Diary (CW 1/3), the Government records, the Bank records, the entries in the account books of the Operators, wherein these amounts paid to Ponnec Agencies have been shown under various heads or names, such as promotional expenses, commission etc., the evidence rendered by the officials, the Operators or their representatives, the correspondence which passed between the local representatives and their Head-offices, or between the Association and the Government Departments, and the tell-tale surrounding circumstances.

I would therefore hold that it has been indubitably established—

(a) that Shri Anbil Dharmalingam acting in concert with V. Rajagopal, entered into an arrangement with the Operators whereby he agreed to receive gratification in the shape of commission, as a reward or consideration for securing for the Operators, by inducing with the exercise of his personal influence, the Chief Minister, Shri Karunanidhi and the Director of Agriculture, Shri Hari Bhaskar, contracts for aerial spraying of crops with helicopters at the rate of Rs. 9 per acre ;

(b) that in pursuance of the aforesaid arrangement, a firm, in the name of Ponnec Agencies, was floated in which Mrs. N. D. Mahalakshmi, a 'dummy' partner was inducted to cover and conceal the share of Shri Anbil Dharmalingam, which was to receive equally with Rajagopal 66 per cent of the commission to be collected from the Operators ;

(c) that in pursuance of the aforesaid arrangement Shri Anbil Dharmalingam, actually received Rs. 20,000 on 1st July 1970, towards his share of the 'commission', through V. Rajagopal, collected from the Operators.

Regarding gratification of Rs. 25,000 allegedly paid by Shri H. P. Rao on 17th November 1970.

At this stage it will be appropriate to consider the circumstances which led to the reinduction of Pushpaka Aviation as one of the contractors for doing aerial spraying work in Tamil Nadu at the rate of Rs. 9 per acre. It is in the evidence of Hari Bhaskar, CW 9, that in accordance with the verbal instructions of the Chief Minister, he had cancelled (*vide* his communication, dated 29th June 1970, Ex.CW 9/10) the contract that had been initially awarded to Pushpaka Aviation, pursuant to the Government Orders, dated 8th June 1970, at the rate of Rs. 8 per acre. On receiving the intimation of cancellation of his Company's contract, H. P. Rao, Managing

Director of Pushpaka Aviation wrote a letter on June 6, 1970, representing to the Minister for Agriculture for allocation of acreage, for spraying to his Company, also, at the rate of Rs. 9 per acre. Rao wrote another letter, dated September 7, 1970, informing the Director of Agriculture that the helicopters purchased by his Company from abroad were expected to arrive in the first week of October, 1970 and that consequently, he should be allotted 1.5 lakh acres for spraying at Rs. 9 per acre.

Rao, CW 6, has deposed that he gathered that it was only the Chief Minister who could give him work at the rate of Rs. 9 per acre. He therefore approached Kannadasan, a good friend of the Chief Minister, and requested him for help in the matter. Kannadasan spoke to the Chief Minister and thereafter informed Rao that the Chief Minister had issued the necessary directions to his Private Secretary, Vaithialingam, to see that Pushpaka was allotted work. Thereafter, Rao met Vaithialingam and requested him to get for his Company an allocation of 1.5 lakh acres for spraying at the rate of Rs. 9 per acre. When Rao called on Vaithialingam, he telephoned to Hari Bhaskar that the latter should allow Pushpaka to deposit security which was an essential preliminary step towards the allocation of work. Rao then went to Hari Bhaskar who allowed him to deposit to Rs. 5,000 as security in the Reserve Bank of India, Madras, which he did on 7th September 1970.

H.P. Rao (CW 5) has further testified that in the beginning of November, 1970, he again approached Vaithialingam and pressed him to get allocated for his Company spraying work at the rate of Rs. 9 per acre. Vaithialingam promised to talk to the Chief Minister. A few days later, Vaithialingam told Rao that the Chief Minister was agreeable to give him an allocation of 1.5 lakh acres, provided he paid Rs. 25,000. Rao submitted that Rs. 25,000 was too big an amount and that he was not in a position to pay. Vaithialingam thereupon firmly told him that that was the final verdict of the Chief Minister. Rao further pleaded that since the spraying season was coming to a close, his Company would not be able to complete aerial spraying of 1.5 lakh acres. Vaithialingam assured him that the amount was being demanded for giving him an allocation of 1.50 lakh acres for spraying, and in case the whole of that acreage would not be completed in that season, Vaithialingam would arrange that his Company was compensated in the following year for the shortfall. On this assurance and looking to the fact that his helicopters were lying idle at Madras along with the staff, Rao had no other go but to agree to this demand for payment of the gratification.

Then on November 17, 1970, Rao withdrew Rs. 25,000 by a cheque No. 25226, dated 16th November 1970 (CW 5/4) from the First National City Bank, Mount Road, Madras and paid that amount, the same day to Vaithialingam for onward transmission to the Chief Minister (*vide* his affidavit and deposition as CW 5 before the Commission).

Rao's statement receives ample corroboration from other evidence, documentary, oral and circumstantial. The record of the First National City Bank, Mount Road, Madras shows that by cheque No. 25226, dated 16th November 1970 (Ex.CW 5/4) Rao withdrew a sum of Rs. 25,000 on 17th November 1970 from that Bank. The records of Pushpaka Aviation contain a Transfer Voucher No. 78 dated 30th November 1970. In this voucher a sum of Rs. 25,000 has been shown in the suspense Account of H. P. Rao. The corresponding entry is at page 176 of the Ledger of this Company, pertaining to the suspense account of H. P. Rao. The aforesaid Bank records and the Company's records unerringly lend two-way corroboration to the testimony of H.P. Rao with regard to this payment. Firstly, they show that on 17th November 1970, H.P. Rao had raised the precise amount in cash. Secondly, this expenditure could not be supported by any voucher which could justify its adjustment in the Company's expenditure account. This fits in with the fact that no voucher or receipt evidencing this payment was given by the payee, with the result, that this amount still stands unadjusted in the Suspense Account of H. P. Rao.

Now I will take up the oral evidence which confirms the testimony of Rao, CW 5.

Vaithialingam, CW 6, has corroborated Rao's version in these words :

"After Kannadasan spoke to the Chief Minister in September 1970, the Chief Minister instructed me to contact the Director of Agriculture, Hari Bhaskar to find out why the contract of Pushpaka Aviation has been cancelled. I immediately spoke to the Director of Agriculture who told me that Pushpaka Aviation did not place the aircrafts in position. . . . I conveyed this information to the Chief Minister and he told me to explore the possibilities of helping Mr. H. P. Rao. I again contacted Mr. Hari Bhaskar who informed me that the Pushpaka Aircrafts were in position, and, if Mr. Rao remitted the required Security Deposit, his case could be considered favourably. A day or two later, Mr. H. P. Rao came and met me and asked me, whether the Chief Minister had given any instructions regarding the restoration of his contract. Sometime in November 1970,

that is on 10th November 1970 (after seeing the file) the Chief Minister passed an order to the effect "Secretary, Agriculture may speak". At that time Mr. P. N. Vedanarayanan, was the Agriculture Secretary. He met the Chief Minister after I had informed him about this order Vedanarayanan then met the Chief Minister 2 or 3 days later, and took instructions from him Mr. Vedanarayanan, after taking instructions from the Chief Minister, went back to his room in the Secretariat and a day later he came to the Chief Minister with a note. I learnt from Vedanarayanan that the Chief Minister did not approve of that note. Mr. Vedanarayanan further told me that the Chief Minister wanted him to recast the note. He asked me why the Chief Minister was not approving his note. I told him that the Chief Minister was demanding money from Pushpaka Aviation and, therefore, he (Vedanarayanan) could prepare a revised note which may suit the desire of the Chief Minister. . . . The note dated 17th November 1970 in this file was the revised note which was put up by him to the Chief Minister (Ex. CW 6/4). . . Mr. Rao was pestering me persistently. I told him that Chief Minister had while passing orders on 10th November 1970, asking the Secretary, Agriculture to speak to him, instructed me to convey to him (Rao) that contract could be given to Pushpaka Aviation if he paid Rs. 25,000 to the Chief Minister for awarding the contract, for 1.5 lakhs acres at Rs. 9 per acre. I conveyed this to Mr. Rao sometime between 10th November 1970 and 17th November 1970. I further told Mr. Rao on 17th November 1970 that a revised note from the Secretary had come and that if he paid the money to the Chief Minister the contract would be given to him. I told him that the Chief Minister was demanding Rs. 25,000 in advance, before the contract could be given. Mr. Rao told me that he would bring the money immediately and the orders of the Chief Minister could be obtained at once. Mr. Rao went away and returned on the same day and handed over to me Rs. 25,000 in currency notes in a cover of brown colour, and I passed on that money as per instructions to the Chief Minister on the same day at his residence in Gopalapuram."

Vaithialingam's statement, in turn, is corroborated by the official records and the surrounding circumstances. It also fits in with the testimony rendered by Vedanarayanan and Hari Bhaskar.

Vedanarayanan (CW 7) testified :

"When I took over as Secretary (Agriculture) on 8th October 1970, the situation was that the file relating to Pushpaka Aviation was awaiting orders of the Chief Minister. I received the file from the Chief Minister on 10th November 1970 who had made orders on it asking me to speak to him. I studied the file and then spoke to Mr. Vaithialingam, Private Secretary to the Chief Minister. Mr. Vaithialingam told me that the Chief Minister was interested in allotting 1.5 lakh acres at Rs. 9 per acre to Pushpaka Aviation. I then prepared a note (Ex. CW 6/3). It was typed to my dictation by my personal clerk, Mr. Natarajan and the corrections in this note made in ink or in blue colour pencil are in my own hand. It was prepared by me as a factual statement for the discussion with the Chief Minister. Therefore I did not sign it. It was meant for myself only. The proposal which I had adumbrated in this note was that one lakh acres be allotted for spraying to Messrs Pushpaka Aviation, that negotiations should be made with the Operator persuading him to do the work at his old rate, viz., Rs. 8 per acre, and in case the Director of Agriculture was unable to make the Operator agree to the old rate, we might agree to give him the rate of Rs. 9. Subsequently, the Private Secretary phoned me and mentioned about the Chief Minister's decision about the allotment and he wanted that I should speak to the Chief Minister, early. Consequently, I met the Chief Minister. I explained to him the proposal to allot one lakh acres to Pushpaka Aviation and that we may give them the rate of Rs. 8 as had been originally quoted by Pushpaka. The Chief Minister was not impressed with my reasoning. He directed me to put up the proposals for orders directly to him, recommending allotment of 1.5 lakh acres (to Pushpaka) at Rs. 9 per acre as in the case of others, to him. The Chief Minister asked me to put up the file making a proposal as desired by him directly to him (Chief Minister). On my way back, I went to the room of Mr. Vaithialingam. Mr. Vaithialingam told me that the Chief Minister had agreed to accept an amount of Rs. 25,000 from Messrs Pushpaka Aviation Ltd., and that he wanted an allotment of 1.5 lakhs acres at Rs. 9 per acre to be made to Pushpaka Aviation early. .

I went back to my room and prepared a fresh note, dated 17th November 1970 (Ex. CW 6/4), at pages 5, 6, 7 of the office file, as it then existed, now shown to me is that note. I sent this note through Tapal (messenger). . Despite the clear direction of the Chief Minister I deliberately did not propose in my note any rate of contract for Pushpaka Aviation. I left the decision as to the rate to be taken by the Chief Minister of his own. But the Chief Minister went behind my note, to the earlier note dated, 25th September 1970 of Shri V. Sundaram, the then Deputy Secretary (Agriculture) and passed the order, dated 12th November 1970, written in his own hand to the effect

" M " on page 2 ante may be done".

"I communicated the orders of the Chief Minister to the Director of Agriculture on 18th November 1970."

With regard to the circumstances leading to the re-award of the contract to Pushpaka Aviation in November, 1970, Hari Bhaskar (CW 9) has deposed :

"Sometime in September 1970, I received a telephone call from Mr. Vaithialingam and he asked me to accept the security deposit of Rs. 5,000 in the case of Pushpaka Aviation and to consider their case favourably. He also asked me to expedite my comments on Pushpaka's case. I then directed my Office to place the facts before the Government. On 18th September 1970, I sent his request to the Government as per my letter (Ex. CW 9/11), which merely contained a statement of factual position, leaving the decision as to the rate of contract and the inclusion of Pushpaka Aviation or others to the Government. Two months later, on 18th November 1970 I received orders from Secretary, Agriculture, Mr. Vedanarayanan, in a letter, dated 18th November 1970 (Ex. CW 9/12) directing that Pushpaka Aviation be allotted an area of 1.5 lakh acres at the rate of Rs. 9 per acre".

A perusal of the relevant file G. O. 1929, Sl. No. 24 of the list of records filed by the State Government shows that on 20th July 1970, a request was received by the Agriculture Minister from Pushpaka Aviation asking for reconsideration of the order cancelling the allotment made to them and requesting that they may also be allotted suitable acreage at Rs. 9 per acre. There upon, the Director of Agriculture wrote a letter (Ex. CW 9/11), dated 18th September 1970, to the Secretary to the Government, Agriculture Department. The material part of this letter reads as under :

"...Government have called for the remarks on the letter of Thiru Pushpaka Aviation (P) Ltd., Bombay which was addressed to the Hon'ble Minister for Agriculture. The rate fixed quoted by this firm is Rs. 8 per acre which is the lowest as compared to that of the other 9 approved aircraft firms who have quoted Rs. 9 per acre. This firm in their quotation had hinted that their helicopters which are to be imported from abroad would arrive in India by July, 1970. In view of the lowest rate offered by this firm, they were permitted to take up the work in Tamil Nadu in an area of 1.50 lakh acres...in view of the uncertainty of the firm on the actual date of arrival of helicopters, in this State, the orders allocating the area of 1.5 lakh acres to this firm were cancelled and the areas have been reallocated to other firms... The firm has later represented the issue to the Hon'ble Minister for Agriculture in their letter, dated 6th July 1970... requesting for the allotment of areas and for approving the rate of Rs. 9 per acre. In their letter fourth cited...the firm have stated that their Helicopter will arrive at Bombay port on 25th October 1970 and that they could position the unit at Madras by the end of October 1970 to take up the spraying... In view of the recent representation made by the firm in their letter fourth cited, I submit that the following issues are involved in the request for consideration and orders by the Government.

1. The inclusion of this firm viz., M/s. Pushpaka Aviation now, before the planes reach Madras.

2. The approval of the rate of Rs. 9 whereas the firm in the beginning agreed to Rs. 8 is to be decided. Inasmuch as the decision was taken at Government level on the fixation and approval of rates, this needs examination and issue of orders at Government level only.

3. In as much as the Government have given approval on the previous occasions to various firms, the inclusion of this firm, viz. Pushpaka Aviation is to be decided by the Government.

4. There is no difficulty in assigning the areas to this firm if the above issues are settled. The total area that is to be allotted to this firm may be indicated without confining to a particular crop or division....

5. There is no scope for Ground nut crop at all.

I Request early orders of Government.

(Sd)—

for Director of Agriculture."

When this reference was received in the Secretariat, it was dealt there first by Shri V. Sundaram then Under Secretary (later became Deputy Secretary) to the Government. In his note, V. Sundaram after setting out the factual position in detail and the gist of the previous orders, dated 7th September 1970, by which the Government had approved the proposal of the Director of Agriculture to give work orders to the Operators who were members of the Association at the rate of Rs. 9 per acre for spraying from helicopters, referred to the representation made by H. P. Rao of Pushpaka Aviation. He then reproduced the request made by Pushpaka in H. P. Rao's representation contained in his letter, dated September 7, 1970 as below :

"They have therefore requested the Government to allot an extent of 1.5 lakhs acres during 1970-71 to them at the rate of Rs. 9 per acre—the rate per acre fixed by Government for aerial spraying by helicopter this year."

Thereafter in paragraph 4 he formulated two issues for consideration and orders by Government. Those issues have already been extracted in a foregoing part of this report. V. Sundaram's note (CW 6/5A), dated 25th September 1970, was submitted by him to K. Diraviam the then Secretary, Agriculture, who made an endorsement recommending that in the first place, Pushpaka be persuaded to accept to do the work at the rate of Rs. 8 per acre which was originally quoted by them. He suggested that only if negotiations to bring round Pushpaka to do the work at their original quotation failed, then, there was no option but to give them Rs. 9 per acre. The proposal contained in Diraviam's note was endorsed by Smt. Muthu on 26th September 1970 and marked to the Chief Minister. As has been deposed to by Vaithialingam, this file containing the notes of the Under-Secretary, the Secretary and the endorsement of Agriculture Minister was received by him in the Chief Minister's office on 29th September 1970 and on the same date, it was placed before Shri M. Karunanidhi. Shri M. Karunanidhi however, asked Vaithialingam to retain the file in his office, and he did not pass any orders on the file at that time. Subsequently on 10th November 1970, Shri Karunanidhi passed this order :

"Secretary Agriculture may speak".

As already noted, by that time, Vedanarayanan had taken over as Secretary, Agriculture. What happened to this proposal and this file after 10th November 1970, has been deposed to by Vedanarayanan. That part of his deposition, has already been extracted above.

Vedanarayanan's statement that he did not sponsor the orders eventually made by the Chief Minister on 18th November 1970, finds cogent corroboration from his unsigned note and also his conduct. In this note (Ex. CW. 6/3) after collating all the relevant information, he has stated that "considering the fact that there is need for quicker coverage under aerial spraying and the large extent in default by the existing Companies, there can be no argument by the Companies against introduction of another set of fleet for aerial spraying. We will ask the Director of Agriculture to negotiate at the old rates, and in case, he is not able to get at the old rates, we may agree the rate of Rs. 9". In short, substantially his proposal in this note was the same as in the endorsement dated 29th September 1970 (CW6/5A) of his predecessor-in-office. It can be spelled out from his evidence read along with the office record, that it was probably on the 13th or 14th November 1970 that he went to the Chief Minister with this note and argued on the basis thereof in favour of the proposal adumbrated, therein. Vedanarayanan, as he says, was surprised at the insistence of the Chief Minister on making an order allotting 1.5 lakhs acres to Pushpaka at Rs. 9 per acre straightaway, without trying for a reduced negotiated rate. For resolving this doubt, he talked to Vaithialingam. It was in these circumstances, that Vaithialingam disclosed to him that the Chief Minister had agreed to accept Rs.25,000 as gratification from Pushpaka as a consideration for awarding them contract at that rate, and advised Vedanarayanan to put up a revised note, as desired by the Chief Minister. Even so, Vedanarayanan was reluctant to submit a revised proposal which he thought to be wrong. In his revised note, dated 17th November 1970 after saying that there was left over of 1.55 lakhs acres of Paddy, that was proposed to be covered by the scheme, Vedanarayanan, in the penultimate paragraph, said: "Proposal to entrust Pushpaka Agencies for aerial spraying may be approved". He did not commit himself as to the rate to be awarded and the acreage to be allocated to Pushpaka Aviation. Vedanarayanan has explained that he had deliberately omitted to commit himself on these points because he did not want to make a wrong proposal on his responsibility. He left the decision on these points to be taken by the Chief Minister, himself. Vedanarayanan has also explained that he intentionally did not take this revised note to the Chief Minister personally, as was desired by him, but sent it through a messenger (Tapal). Obviously, he thought, he might not be ordered by the Chief Minister to make the proposal more specific by recommending there and then in his presence, an allocation of 1.5 lakhs acres at the rate of Rs. 9 per acre to Pushpaka. It seems that he intentionally evaded to put up the revised note, himself, to the Chief Minister and instead, sent it through the Tapal to avoid such an embarrassing situation. But the Chief Minister, instead of writing in his order in his own hand, the rate and the acreage to be given to Pushpaka, resorted to the expediency of sidelining a portion of Sundaram's note, dated 25th September 1970, and marking the same as 'M', and said; 'M' on P. 2 ante may be done".

I have reproduced that portion of Sundaram's note, earlier. It is apparent there from that in the portion marked 'M' by the Chief Minister, Mr. Sundaram did not make any proposal. He simply reproduced the gist of what H. P. Rao had requested for in his representation, dated 7th September 1970. Although the file was received by the Chief Minister after the endorsement of the then Secretary, Agriculture, and the Minister on 29th September 1970, he deliberately retained it without passing any specific orders on it, for more than one and half months. Orders were passed only on 18th November 1970, that is, one day after the payment of Rs. 25,000 by H. P. Rao to Vaithialingam who, according to his testimony, passed it on to the Chief Minister on the same day. The intransigent attitude of the Chief Minister in refusing to accept or approve the reasonable proposal of Diraviam which was endorsed and canvassed by Vedanarayanan on or about the 13th or 14th November, 1970 before him, was evidently influenced by the circumstances that near about that date, his demand for the gratification of Rs. 25,000 had been communicated to Rao through Vaithialingam, and H. P. Rao also, after a good deal of pleading agreed to pay the same. Since the matter was still inchoate and the promised gratification was yet to be paid, the Chief Minister did not pass any orders on the day on which Vedanarayanan went to meet him and argued in favour of the proposal in his unsigned note, Ex. CW-6/3.

It may be observed that the genuineness of these office notings, including the unsigned note Ex. CW-6/3, has not been questioned by the Respondents although they had fully inspected these records. Men may lie but these circumstances, which have been cogently established, cannot. The payment of the gratification was made on 17th November 1970 by Rao and orders were passed by the Chief Minister in favour of Rao's Company on the 18th and, on the same day the orders were communicated to the Director of Agriculture for immediate compliance.

From what has been said above, it will be seen that the evidence of H. P. Rao, Vedanarayanan and Vaithialingam has been substantially corroborated by documentary and circumstantial evidence.

In view of the above discussion I would hold that it has been clearly established that Shri M. Karunanidhi on 17th November 1970, received a sum of Rs. 25,000 as gratification, from, H. P. Rao of Pushpaka Aviation (P) Ltd., as a motive or reward for awarding to the said Company aerial spraying contract during the year 1970-71 in respect of an acreage of 1.5 lakhs at the rate of Rs. 9 per acre, a rate which was in excess of what that Company itself had quoted, earlier.

The commencement of the financial year 1971-72 brought some important changes in the status of the persons concerned. In February 1971, Shri Anbil Dharmalingam was elected to the State Legislative Assembly, and thereafter on March 15, 1971, he was sworn in as Minister for Agriculture. Rajagopal (CW1) has testified that this news was so important to him that he woke-up Ramachandran (CW-3) at 3 O'Clock in the morning to convey it to him. Ramachandran, according to his deposition thereupon tried immediately to speak to his Principal, J. R. Modi, at Bombay, over the trunk telephone, but to his dismay the trunk lines were out of order. He then conveyed this news through a letter (Ex CW-4/5) written on the same date, in which he described Shri Anbil Dharmalingam as "our friend, chief power behind Ponnee Agencies".

The very first act of Shri Anbil Dharmalingam on assuming office as Minister, was, to give instructions to Hari Bhaskar and Vedanarayanan, when they went to offer him congratulations, that they should invite tenders for aerial spraying programme for 1971-72, expeditiously. This fact is borne out by the testimony of Vedanarayanan, CW-7, and Hari Bhaskar, CW-9. Accordingly, on March 16, 1971 Hari Bhaskar asked his Joint Director to invite tenders for the year 1971-72. On March 17, 1971, the Joint Director issued the tender notification (Ex. CW-9/15) for publication. He sent copies of the same to all the Operators on the approved list. Quotations were required to be submitted before April 17, 1971.

Rajagopal, CW-1, has testified that within two or three days of his becoming Minister, Shri Anbil Dharmalingam, told him that they would be inviting tenders for aerial spraying for 1971-72, and that he should get the commission payable by the Operators fixed at Re. 1 per acre. Shri Anbil Dharmalingam added that the Chief Minister had not been paid by the Operators during the previous year and the contracts for the year 1971-72 could be secured, by them, only with the Chief Minister's approval. Rajagopal passed on this information to Pat Dimncy, S. A. Ramachandran and Khemka who promised to communicate it further to the Directors of the Aviation Companies, at Bombay. Rajagopal, too, personally conveyed the information to H. P. Rao, who was then in Madras.

From the testimony of R. S. Cambata, CW-8, and R. H. Captain, CW-2, it further appears that Khemka sent a letter, dated March 24, 1971 (Ex. CW-2/3), to the Association enquiring—

"(a) Whether Members would be tendering for the year 1971-72 and also in the name of the Association ;

(b) whether any Agent, like last year, should be appointed".

This letter was discussed at a meeting of the Association held on March 26, 1971.

Exhibit CW-8/3 is a record of the minutes of that meeting. This record shows that the Association decided to quote unanimously, the rate of Rs. 10 per acre plus Re. 1 for flagging, etc., total Rs. 11 per acre. There was only one dissenting voice, which was of Sunit Singh Bubber, the Managing Director of H. S. Shoba Singh (P) Ltd., who said that he would be quoting a lower rate, independently. A letter (Ex. CW-8/4) was also received from H. S. Shoba Singh (P) Ltd., which was discussed at another meeting of the Association on April 3, 1971. At this meeting the Association appointed a sub-committee consisting of H. P. Rao, Suresh Sanghi and Raman to represent the Association at the opening of tenders on 8th April 1971. The tenders were opened on April 8, 1971. The record of the processing of the tenders is to be found in the Directorate's file No. D. Dis C. 2198 (Vol. 2.) referred to at Serial No. 18 in the List of Records received from the State Government of Tamil Nadu. H.S. Shobha Singh (P) Ltd., quoted Rs. 9.50 per acre for spraying with helicopter. All the other Operators quoted uniformly, Rs. 10 plus Re. 1 per acre. The Sub-committee of the Association during their visit to Madras, met Rajagopal and Jayaraman. Rajagopal impressed on them that since his close friend, Shri Anbil Dharmalingam, had become the Minister for Agriculture, he would be able to procure for them a rate of Rs. 11 per acre, if they paid commission at the enhanced rate of Re. 1 per acre. The Sub-committee reported their talk with Rajagopal to the Association, which discussed this matter at a meeting held on May 5, 1971. Rajagopal and Jayaraman also attended the meeting. They again assured the members that they could procure a rate of Rs. 11 per acre for them, if the commission was enhanced to Re. 1 per acre.

On their return to Madras, Rajagopal reported to Shri Anbil Dharmalingam about the result of his negotiations with the Operators at Bombay.

It is in the evidence of H. P. Rao (CW-5) that he along with Rajagopal, met the Agriculture Minister, Shri Anbil Dharmalingam, at his residence and discussed the matter of aerial spraying contracts. Shri Anbil Dharmalingam said that he would let them know after discussing the matter about the rates with the Chief Minister. H. P. Rao has added, that Shri Dharmalingam in their presence, tried to contact the Chief Minister on telephone, but was unable to do so, and thereafter he told them that he would inform about the result of his discussion with the Chief Minister through V. Rajagopal to Rao. Impressed by Rajagopal's performance, Rao communicated about this meeting with the Minister in his letter, dated May 13, 1971 (Ex. CW-5/6), to the President of the Association.

Rajagopal, CW-1, also has referred to this meeting of the witness and Rao with Shri Anbil Dharmalingam. According to him, at this meeting, Shri Anbil Dharmalingam had communicated that the rate quoted by the Operators had already been accepted by the Chief Minister, but he would have it confirmed again from the Chief Minister, and for that purpose, in their presence, phoned to the Chief Minister, but could not contact him. Rajagopal has further stated that 3 or 4 days later, Shri Anbil Dharmalingam informed him that the Chief Minister had agreed to give the contracts at Rs. 11 per acre, subject to the payment of Re. 1 per acre as commission. Rajagopal communicated this information to H. P. Rao and gave a draft letter to him for procuring the signatures of the other Operators in token of their agreeing to pay the commission at Re. 1 per acre. This draft agreement was drawn up in the name of Ponnee Enterprises, which was a new firm floated on 10th April, 1971, at the suggestion of Shri Anbil Dharmalingam.

Rao CW-5, has also deposed to these facts and thus corroborated Rajagopal in regard thereto.

It is in the evidence of Cambata and Rajagopal that Rajagopal met the Operators at Bombay at a meeting of the Association on June 25, 1971. After conferring in camera, the operators informed Rajagopal that they could not pay commission at a rate exceeding 80 paise per acre. Rajagopal has testified that he told the Operators that he could not agree to accept the commission at the reduced rate offered by them without the prior approval of the Minister, Shri Anbil Dharmalingam. To demonstrate this, he put through a trunk call from Cambata's office, in the presence of Cambata, and talked to Shri Anbil Dharmalingam. The talk was mainly in Tamil, but a few words such as 'rate' 'commission', etc., were mentioned in English and Cambata who was over-hearing this talk, could understand only those words. After this telephonic talk, Rajagopal informed Cambata and other Operators that the Minister, Shri Anbil Dharmalingam had agreed to payment of the commission at the rate of 80 paise per acre. The Operators, however, wanted to reassure themselves whether Rajagopal had still the capacity to procure for them contracts at the rate of Rs. 11 per acre. Cambata, therefore, asked Rajagopal to arrange their meeting with the Minister to discuss the matter of contracts.

After his return to Madras, Rajagopal informed Cambata that their meeting with the Minister had been fixed for the 2nd July. The Operators also received information from Hari Bhaskar of the date of their proposed meeting with the Minister.

Accordingly, on July 2, 1971, Cambata, Captain, Rao, Khemka, Dastoor, Manekji and one representative of the Agricultural Aviation went to the house of the Minister, Shri Anbil Dharmalingam, in the afternoon, and waited there. Rajagopal came thereafter. He first, alone met the Minister in the first floor and then told the Operators waiting in the Hall, that the Minister had agreed to give them contracts at the rate quoted by them, if they would pay the commission at 80 paise per acre. Cambata and his companions were not satisfied. They insisted on seeing the Minister. Rajagopal again went into the interior and came out with the Minister, who then met the Operators and told them they would get the contracts as desired, provided the commission was fixed at 80 paise per acre. The Minister warned the Operators not to misbehave as they had done in the previous year, but must be prompt in payment of the commission.

The above facts find consistent mention in the evidence of Cambata, CW-8, R. H. Captain CW-2, and J. K. Manekji who all have corroborated Rajagopal in regard thereto.

Rajagopal's testimony receives further confirmation from the evidence of Hari Bhaskar (CW-9) who has deposed that on the 2nd July, 1971, Cambata, Rao and the other Operators met him and then went to see the Minister, Shri Anbil Dharmalingam, as previously arranged, at the latter's residence. The witness significantly added that after this meeting, the Operators again met him and reported that the Minister had agreed to award them contracts at the rate of Rs. 11 per acre, provided they paid a commission of 80 paise per acre to his friend, Rajagopal. Hari Bhaskar was surprised on receiving this information because the contract rate agreed to by the Minister exceeded the ceiling rate of Rs. 10 per acre fixed by the Government of India. The witness, however, did not make any comment.

C.W. 7, Vedanarayanan's evidence also lends corroboration to the evidence of Rajagopal and the other Operators in regard to what transpired at the meeting between the Operators and the Minister. Vedanarayanan has stated that this meeting which was originally scheduled to be held at the Secretariat, was eventually held at the residence of the Minister on 2nd July 1971. Witness saw the Operators, including Captain, H.P. Rao, Dastoor, who had come for that meeting and learnt that at the instance of Rajagopal, the Minister had agreed to offer the contracts at Rs. 11 per acre, on the condition that commission of 80 paise per acre was given to Rajagopal. On 15th July 1971, Shri Anbil Dharmalingam called the witness and informed him that as approved by the Chief Minister, he had decided to give the contracts at Rs. 11 per acre.

Vedanarayanan has also stated that earlier, the Minister had asked him to reject the quotation of H. S. Shoba Singh (P) Ltd., on some excuse or the other and recommend the rate of Rs. 11 per acre for those Operators who had quoted that rate. The witness had then told the Minister that it was not correct to give the contracts at a rate, higher than the ceiling rate of Rs. 10 fixed by the Government of India, nor to reject the tender of H. S. Shoba Singh which was the lowest, being Rs. 9.50 per acre. Vedanarayanan has further stated that subsequently, in June 1971, Shri Anbil Dharmalingam again called him and informed that the Chief Minister had agreed to accept the rate of Rs. 11 per acre, and desired that a way should be found to reject the lowest quotation of H. S. Shoba Singh (P) Ltd., Witness expressed reluctance and again pressed his viewpoint. Finding the Minister adamant and insistent, the witness thought; "I had no other alternative except to communicate this decision to Hari Bhaskar, Director of Agriculture". Witness added that "during discussion with the Director of Agriculture the latter told me that the C. M. had himself directed him not to consider the quotation offered by H. S. Shoba Singh (P) Ltd. even though it might be the lowest".

The truth of what these witnesses have stated with regard to the Minister demanding a commission of 80 paise per acre through Rajagopal of Ponnee Enterprises as a consideration for agreeing to award to the Operators contracts at the rate of Rs. 11 per acre, is reassured by the telling circumstances that after this meeting on the same day (July 2, 1971), the Operators, who were demonstrably convinced that Rajagopal was the mouth-piece of the Minister, Shri Anbil Dharmalingam, finalised and executed the Agreement (Ex. CW 2/6), agreeing to pay commission at 80 paise per acre to Ponnee Enterprises. This Agreement was to become operative on the execution of the contract-deeds which were then expected to be executed and completed by July 10, 1971.

The Agreement (Ex. CW 2/6) executed by the Operators with Rajagopal of Ponnee Enterprises, however, remained still-born because soon thereafter, events took a different turn.

It is in the evidence of Vedanarayanan (CW-7) that on 15th July 1971, Shri Anbli Dharmalingam called the witness and told him that the Chief Minister had desired that a commission of Re. 1 per acre should be collected from the Operators for awarding them the contract rate of Rs. 11 per acre, and that henceforth Rajagopal should not be associated with the collection. According to the witness, Shri Anbil Dharmalingam emphasised that the commission to be paid by the Operators should, at least, be 90 paise per acre, if not, Re. 1 per acre. The Minister wanted the witness to convey this to the Operators. Witness showed extreme reluctance to this proposal and

clearly told the Minister that it was not within his province to discuss such issues with the Operators, adding that this was not a correct thing to do. The Minister felt perturbed and told the witness that he was communicating only the orders of the Chief Minister who expected compliance in the matter.

It is in evidence that on July 16, 1971, Cambata, President of the Association, received the telegram, (Ex. CW 8/11) from Jayaraman, a partner of the Ponnee Enterprises informing them that he was asking for extension of the time for submitting contract agreements duly signed by the Operators to the Director of Agriculture. The Minister, Shri Anbil called a meeting of the Operators at Madras for 19th July 1971, at which Hari Bhaskar was also directed to be present. No official record or the minutes of that meeting is available. But there is the oral evidence of Hari Bhaskar, Vedanarayanan and the Operators regarding the proceedings of this meeting. Hari Bhaskar's statement with regard to the calling of this meeting is corroborated by the telegram (Ex. CW 9/19) which he had sent to the President of the Association inviting the Operators to come for the meeting. Cambata, as he has testified, could not go to Madras on 19th July 1971. He therefore, deputed R. H. Captain to represent the Association.

Accordingly, R. H. Captain, Suresh Sanghi, Dastoor and one or two other Operators came down to Madras and stayed in the Connemara Hotel. They first met Hari Bhaskar and then Vedanarayanan. There were some other officials present at the meeting. After a general discussion, the other officials and some of the Operators went away; but Captain, H. P. Rao, Suresh Sanghi, Dastoor, Hari Bhaskar and Vedanarayanan stayed back for tea. Vedanarayanan then communicated to the Operators what Shri Anbil Dharmalingam, Minister for Agriculture, had instructed him on 15th July 1971, and again on telephone on 19th July 1971, prior to the meeting to convey to the Operators, regarding the enhancement of the commission to Re. 1 and the elimination of Rajagopal. This part of the story is borne out by the evidence of Vedanarayanan, Hari Bhaskar, R. H. Captain, H. P. Rao, and Suresh Sanghi.

After meeting Hari Bhaskar and Vedanarayanan and hearing from them the Minister's desire for enhancement of the commission to Re. 1 or at least 90 paise, per acre, and its payment through an agent other than Rajagopal, to be nominated by the Minister, the four Operators, accompanied by Vedanarayanan and Hari Bhaskar, went into the Minister's chamber. There, Shri Anbil Dharmalingam himself confirmed what Vedanarayanan and Hari Bhaskar had earlier communicated to the Operators.

It is in evidence that after the meeting with the Minister, Captain and his three companions, again met Vedanarayanan and informed him that they could not commit themselves without consulting Cambata, President of the Association. Captain, thereafter phoned to Cambata to come down to Madras. The latter arrived at Madras on 21st July, 1971, along with Manekji and Krishnan. All of them first met Vedanarayanan and were then taken to the Minister's chamber. Shri Anbil Dharmalingam arrived after a few minutes and asked Vedanarayanan to take Cambata, Captain and Dastoor to another chamber wherein he confirmed what Vedanarayanan had earlier communicated to the Operators about the enhancement of the commission and its payment through an agent other than Rajagopal. It is further in evidence that Cambata and his companions unsuccessfully pleaded with the Minister to accept commission at 80 Paise per acre and not to increase it to 90 Paise per acre. Cambata also pointed out that they had already signed, at the Minister's instance, an Agency Agreement with Ponnee Enterprises and, as such, were bound to pay them as well. The Minister, however, was adamant in demanding the commission at the rate of 90 Paise per acre to be paid through an agent other than Rajagopal. He, however, assured Cambata that he should not worry about Rajagopal, saying that 'Rajagopal was his own man and was brought into the picture by him.'

The preceding facts have been deposed to by Cambata, Captain and Vedanarayanan.

It is further in the evidence of Vedanarayanan that on 23rd July 1971, Shri Anbil Dharmalingam directed the witness to put up a note for the Minister's approval so that orders could be passed for awarding aerial spraying contracts at Rs. 11 per acre in favour of the Operators. Witness, on the same date, wrote a D.O. letter (Ex. C.W. 7/4) to Hari Bhaskar stating that there had been representations from the Operators and that the Government had considered that a rate of Rs. 11 per acre for helicopters, including Re. 1 for flagging charges, etc., would be reasonable. The Director of Agriculture was asked to allocate the work to eligible Operators who had applied for it subject to the usual conditions. Witness also prepared a note (Ex. C.W. 7/5) on these lines on 27th July 1971, which was approved by the Minister, Shri Anbil Dharmalingam, on the same date, and by the Chief Minister, on the 2nd August 1971. The reason for making these orders awarding contracts at the enhanced rate of Rs. 11 per acre was stated as the increased cost of propulsion and fuel charges, etc. After the approval of the proposal by the Chief Minister

Vedanarayanan wrote another D.O. letter (Ex. C.W. 7/6), dated 5th August 1971, to Hari Bhaskar communicating the same rates. According to Hari Bhaskar, on receiving the D.O. letter, he issued orders (Ex.C.W. 9/20), making allocations to the various Operators.

Vedanarayanan has further testified that as instructed by Shri Dharmalingam, he orally directed Hari Bhaskar not to mention the contract rate in the work allocation order to be issued to the Operators.

Hari Bhaskar also has confirmed the aforesaid fact. The evidence of Vedanarayanan and Hari Bhaskar, with regard to the oral instructions of the Minister for not mentioning the contract rate in the (allocation orders) and not delivering the completed contract-deeds to the Operators, finds corroboration from the negative circumstance, that these Officers—against whom personally, the Operators have nothing to complain—did not do these acts, which, otherwise, in the normal course of their official duties they would have done. Spare copies of the contract deeds signed by the Operators, which had been obtained by the Director of Agriculture from them were not returned after execution by the Director, to the Operators, despite their repeated requests. No documentary evidence of the contract rate, not even in the work allocation orders, was made available to them.

It is further in the evidence of Vedanarayanan that on 2nd August 1971, i.e., the same date on which the Chief Minister had approved Vedanarayanan's note (Ex. C.W. 7/5), Vaithialingam conveyed the Chief Minister's desire that the witness should keep a close watch over the discharge of their commitments by the Operators. Accordingly, when Cambata met the witness on 5th August 1971, the latter asked the former to give him a personal guarantee in this respect. Cambata suggested that the regular payment of the commission could be assured if the Government passed orders that 10 per cent of the spraying bills of the Operators should be paid direct to the Association. Vedanarayanan asked Cambata to send a written request to this effect, and in response thereto, Cambata send the letter, dated 11th August 1971 (Ex. C.W. 2/9), authorising payment of 10 per cent of the bills direct to the Association "to defray certain expenditures".

Vaithialingam has corroborated Vedanarayanan with regard to the communication of the Chief Minister's instructions for keeping a close watch on the Operators to ensure regular payment of the commission. Cambata has fully testified with regard to the talk which he had with Vedanarayanan on 5th August 1971. The evidence of Cambata and Vedanarayanan with regard to these facts receives corroboration from the letter (Ex. C.W. 2/9). On being asked what he meant by the expression to "defray certain expenditures" occurring in his letter (Ex. C.W. 2/9), Cambata, in his deposition, clarified: "We meant expenditures covering the commission to be paid to the agent to be nominated by the Minister, Shri Dharmalingam".

It is further in evidence that as soon as the Operators received allocation orders towards the end of July and the beginning of August, they started aerial spraying work on the assurance by the officials that the duly completed signed contracts from the Government side would be delivered to them soon. There was also a penalty clause in the contract according to which the Operators could become liable to pay Rs. 5 per acre for allocated acreage left unsprayed by them. In order to complete the work within the stipulated time, it was necessary for them to start the aerial spraying operations forthwith. Continued delay in getting back copies of the formal, signed contracts from the Government, caused the Operators considerable anxiety.

These facts, among others, have been sworn to by Cambata and Captain.

It is further in evidence that in the meanwhile, H. P. Rao approached Vaithialingam and mentioned to him about the short-fall in the promised acreage in the previous year as well as the delay in handing over the signed contracts for 1971-72. Vaithialingam told Rao that if he paid Rs. 25,000 as advance commission to the Chief Minister, through him, his work would proceed unaffected and the signed contract would also be delivered to him. H. P. Rao accordingly, by a cheque, dated 13th August 1971, Ex. C.W. 5/5, withdrew a sum of Rs. 30,000 from the First National City Bank, Madras, and out of it, paid Rs. 25,000 to Vaithialingam on the same day. Vaithialingam, in turn, passed on this amount further to the Chief Minister at his residence on the same day; and conveyed to Vedanarayanan, on telephone, that H. P. Rao had paid the advance commission to the Chief Minister, and consequently, the bills of Pushpaka Aviation should be got settled and completed contract deed duly signed from the Government side, for 1971-72, should also be handed over to that concern, forthwith. Vedanarayanan enquired Vaithialingam whether the signed contract deeds should be handed over to the other Operators also; and whether their pending bills should also be cleared. Vaithialingam informed him that the arrears could be settled and the signed contracts issued, only to those Operators who paid the commission, fully.

The above facts have been consistently deposed to by H. P. Rao and Vaithialingam. Vadanarayanan has testified that he immediately conveyed these instructions to Hari Bhaskar and got a circular (Ex. C.W. 2/11) issued on 13th August 1971, directing payment of the pending bills as well as the delivery of the signed copy of the contract deed to Pushpaka Aviation.

This was in modification of the earlier circular which Hari Bhaskar had issued three days before on 10th August 1971, according to which, all District Agricultural Officers were required to send the Operators' bills for 1971-72, in original, to the Director of Agriculture for clearance (*vide* page 37/c, file C-2-22-782/71, Sl. No. 21 of the list of the records filed by the State Government). No reasons have been given in the file for adopting this peculiar procedure. The ostensible reason given in the circulars for these stop-payment directions was, that orders with regard to the finalised contract rate had not been received from the Government. This reason was obviously wrong because the bills of some of the Operators had been settled and paid by the concerned District Agricultural Officer. In the revised circular, dated 13th August 1971, Ex.CW-2/11, directions were issued that payments of four Operators, including Pushpaka Aviation, should be released, while those of the other Aircraft Companies represented by Cambata, Sanghi, Khemka and Maneckji should be withheld and in respect of their bills the District Agricultural Officers should await clearance from the Director of Agriculture.

The above facts find mention in the testimony rendered by Vaithialingam, H. P. Rao, Vadanarayanan and Hari Bhaskar.

The evidence of H. P. Rao with regard to the payment of Rs. 25,000 on 13th August 1971, receives corroboration from authentic documentary evidence. Firstly, the records of the Indian Overseas Bank, Madras, show that on 13th August 1971, H. P. Rao withdrew as per cheque No. 45570 (Ex. CW-5/6), a sum of Rs. 30,000 from the account of his Company with that Bank. Secondly, the entries in the account books of Pushpaka Aviation (Private) Limited also show this expense. The entries at pages 265-266 of the Journal [Ex. 11/4-LL (1) and (2)] show an amount of Rs. 25,000 in the suspense account of H. P. Rao. The voucher, J. V. 67, indicates withdrawal of Rs. 32,000. J.V. 68, indicates expenditure by Rao, and Rs. 25,000 in the suspense account.

This documentary evidence is of an unimpeachable kind. These account books, along with the records of the other Companies, were seized by the Income-Tax Authorities in October 1972 (*vide* affidavits of Shri V. V. Badami and Shri A. K. Suryanarayanan, Income-tax Officer), and consequently, there can be no doubt about their genuineness.

The above documentary evidence confirms and firmly establishes the credit of Rao, directly, and of Vaithialingam, indirectly, with regard to this payment by Rao on 13th August 1971, in three ways : (i) that on 13th August 1971, H. P. Rao had ready cash of an amount of over Rs. 25,000 for making this cash payment ; (ii) that this amount was withdrawn from the account of Pushpaka Aviation (Private) Limited, and as such, it was an expense item somehow connected with that Company's business ; (iii) that the expenditure of Rs. 25,000 incurred by Rao on 13th August 1971, still stands unadjusted in the Suspense Account, in the books of the Company, suggesting the inference that the expenditure was incurred without any voucher to evidence it. There is further documentary evidence, in the shape of account-statements or Master Lists, prepared for the purpose of raising contributions and indicating their respective shares in the subsequent payments made collectively by the Operators to the Chief Minister and the Minister, Shri Anbil Dharmalingam. In those Master Lists, the payment of Rs. 25,000 paid by Rao on 13th August 1971, has also been adjusted. That evidence will be noticed while considering the charges relating to the subsequent payments. Further documentary corroboration about this payment is furnished by what is stated in S. A. Ramachandran's letter which will be dealt with later.

Not only this, the factum of this payment made on 13th August 1971 to the Chief Minister, finds strong corroboration from the circumstance, that soon after this payment on August 13, 1971, instructions were conveyed to Hari Bhaskar to clear the pending bills of Pushpaka Aviation, and that the completed contract-deed should also be delivered to them. Hari Bhaskar made prompt compliance therewith. He issued the order, Ex. CW-2/11, dated August 13, 1971, directing all the District Agriculture Officers to settle the pending bills of Pushpaka Aviation. By the same order, he, in accordance with the directions received from the Chief Minister, through Vaithialingam, withheld payment of the bills of the other Operators.

Vaithialingam has testified with regard to the communication of those instructions of the Chief Minister, verbally on phone. Hari Bhaskar has confirmed the receipt of such direction and immediate compliance therewith. Vadanarayanan, also, corroborates that on 13th August 1971, Vaithialingam had told him on phone, about the payment of the amount of Rs. 25,000 by Rao to the Chief Minister and conveyed instructions of the Chief Minister for clearing his bills and

delivery of signed contract to him. Vedanarayanan also passed on those instructions to Hari Bhaskar. As I have observed, there is other evidence also, which lends further support to the evidence of Rao and Vaithialingam regarding this payment. At this place, it will be sufficient to say that even the evidence already discussed, clearly establishes the charge that on 13th August 1971, the Chief Minister, Shri Karunanidhi, by abusing his official position, received through his Private Secretary, Vaithialingam, a gratification of Rs.25,000 in cash, as a motive or reward for doing an act connected with his official functions.

It is in evidence that to expedite delivery of the signed contracts and to secure clearance of their bills for payment, the Operators, including Cambata, R. H. Captain, Krishnan, Pat Dimney and S. A. Ramachandran, on August 13, 1971 met Vedanarayanan. After a general discussion, Vedanarayanan took Cambata and Captain aside and behind closed doors urged them to pay 25 per cent of the commission in advance, in respect of the work already done, to the Minister through an agent whose name was still to be indicated by him. He made it clear to the Operators that their pending bills would be cleared for payment, only after such payment. Thereafter, Cambata and Captain apprised the other Operators about what had transpired at the closed-door meeting.

Confirmation of the testimony of Cambata, Captain and S. A. Ramachandran on this point is furnished by the letter, dated 31st August 1971 (Ex. CW 4/13), which S. A. Ramachandran wrote to his principal, J. R. Medi. at Bombay. In this letter Ramachandran (CW 4), has given a graphic account of this meeting. To quote his words :—

“...it became apparent that it would not be possible to have most of the representatives mentioned above present at the meeting when the vital points (J) were to be discussed. It was, therefore, agreed between myself, Cambata and Captain that after the initial discussion regarding the performance so far, I should lead all the members except Cambata and Captain out of the chamber of the Secretary and the Secretary asked Mr. Reddiar and Mr. Marar also to leave the room.....”

“Mr. Cambata later on told me at the hotel details of the arrangement for commission to be paid on the work. 25 paise to be paid immediately on the work done so far and the Secretary undertook to ensure that 90 per cent payment was made immediately bills were presented.....”

“Mr. Khemka who had waited at the Secretariat till five did not attend the meeting, but this morning asked me on the phone as to what would happen if he refused to make the payment!”

The Operators were greatly perturbed. They were very reluctant to pay the “commission”. It is in the evidence of Cambata, that they had already done considerable amount of spraying work and had not received payment of their pending bills, nor were the signed contract agreements delivered to them.

On September 7, 1971, Cambata sent the telegram (Ex. CW 7/7), to Vedanarayanan :—

“All member Operators are desirous of meeting the Minister for Agriculture on Monday, September 13th *with necessary documents* Stop Would appreciate your confirmation of time and date Stop For your information no payment has yet been received by majority of Operators Stop your assistance and instructions to pay promptly would be greatly appreciated.”

Questioned during his examination as to what he intended to convey by the expression, “with necessary documents” used in this telegram, Cambata replied: “I intended to convey that the Operators had agreed to pay 25 per cent advance of commission and we would be bringing this commission amount with us to Madras, to give to the Minister, or his nominated agent. Thus, by the expression “necessary documents” we meant the amount of commission in the shape of cheques.”

Confirming the receipt of this telegram, Vedanarayanan has testified that he understood the expression “necessary documents” in this telegram, to mean the “commission money”. He was questioned about the role he was playing in this affair. He replied that he felt quite disgusted about the whole affair and was very unhappy about the forced role he had to play in this matter against his conscience. He, therefore, took the telegram to Shri Madhavan, Minister for Law, and explained to him the entire happenings and developments over the past several months. Shri Madhavan listened to him and told him not to worry. Shri Madhavan assured that he would deal with the matter.

However, a day prior to the proposed meeting, on 12th September 1971, Shri Anbil Dharmalingam was abruptly dropped from the Cabinet and Shri P.U. Shanmugham took his place as the Agriculture Minister. He was, however, reinstated on 4th October 1971, as Minister for Agriculture.

It was contended before me by the Counsel for the Memorialists, that this abrupt exit from and re-entry to the Cabinet, of Shri Dharmalingam, was the sequel to an infight or tussle between him and the Chief Minister over the sharing of the "commission" extracted from the Operators. This argument is not based on *torra firma*. At best, it belongs to the realm of conjectures and suspicions. There is no cogent evidence on record to unravel, directly or inferentially, the cause of Shri Dharmalingam's sudden drop from the Cabinet and his re-admission thereto.

It is in evidence that on September 13, 1971, after the exit of Shri Anbil Dharmalingam from the Cabinet, the Chief Minister, Shri M. Karunanidhi, communicated verbal instructions to Hari Bhaskar through Vaithialingam, that payment of the bills of the Operators be immediately stopped till further orders. Vaithialingam has stated with regard to these instructions and the source from which they emanated, thus:

"By 12th September 1971 (perhaps a mistake for 13th September 1971), Shri Anbil Dharmalingam was relieved of the portfolio of Agriculture and Shri P.U. Shanmugham was placed in charge of that portfolio. Immediately thereafter, the Chief Minister instructed the Director of Agriculture not to make payments to the Operators for the aerial work already done by them. On the instructions of the Chief Minister, the Director of Agriculture was asked (by me) not to complete the execution of these formal contract agreements in favour of the Operators for the year 1971-72."

Hari Bhaskar has confirmed the receipt of these verbal orders of the Chief Minister, through Vaithialingam, in these terms—

"On 13th September 1971, I received a telephone call from Mr. Vaithialingam, Private Secretary to the Chief Minister, stating that payment of all dues of the Operators should be stopped forthwith. he informed me that the Chief Minister had so instructed him and had also said that the Operators were becoming too smart and that they should be brought in line."

Hari Bhaskar conveyed the Chief Minister's instructions to the Deputy Director, Shri Ramachandra Marar, who made a note (Ex. CW-9/22) on the file, and in accordance with this note, Shri Marar issued a circular, dated 13th September 1971, (Ex. CW-9/23), directing all District Agriculture Officers not to settle any of the bills of the Operators "Until further orders". This office note (Ex. CW-9/22) and the circular (Ex. CW-9/23), dated 19th September 1971, lend material corroboration to the evidence of Hari Bhaskar and Vaithialingam by establishing the circumstances that stop-payment directions were immediately issued on 13th September 1971 to all the District Agriculture Officers with regard to the bills of the Operators.

Vedamarayanan has also confirmed the issue of such oral directions by the Chief Minister. He has stated that he communicated those directions verbally to Hari Bhaskar. The latter, as already noticed, has vouched as to the receipt of such directions of the Chief Minister through Vedamarayanan.

Thus, Hari Bhaskar had received these oral instructions of the Chief Minister through two highly-placed officers of the Secretariat. In the circular (Ex. CW-9/23), the reason given for stopping these payments was that Government orders sanctioning aerial spraying scheme for 1971-72 were yet to be received. This reason was, as admitted by Hari Bhaskar in his deposition, clearly wrong, as, in fact, payments to some of the Operators had already been made in the past at the contractual rate for the work done by them. Questioned about the propriety of stop-payment circulars and the non-delivery of the signed contracts to the Operators, Hari Bhaskar said that as a subordinate officer he had to carry out the orders issued from Government level, although he felt that it was not correct to make such orders. Hari Bhaskar pleaded that he thought that he was bound to carry out the instructions of his superiors.

After gathering information from James Fredrick and other knowledgeable sources as to the basis of the stop-payment orders, S.A. Ramachandran communicated the same by his letter, dated 15th September 1971 (Ex. CW-4/15) to his principal, J. R. Modi. This letter is revealing and may be extracted :

"I understand that Mr. A. P. Dharmalingam has nothing to do with aerial spraying hereafter and that the new Minister Mr. P. U. Shanmugham will be in-charge of this activity. This new Minister is the 'eyes and ears' of the Chief Minister even inside the cabinet and always reports to the C. M. on the other Ministers' activities. He is also a dangerous man."

.the Secretary was fuming holding the Operators' failure to keep up their promise for so long. The Secretary has issued instructions to the D.A.O's not to make any further payments of bills until they hear from him. The D.A. whom also my friend met, it seems, held the

Operators responsible and also added that a meeting had been fixed for the 18th of this month. My information is the D.A. is being transferred and a man more acceptable to the C.M. is being tipped for the post.....

“.....I am apprehensive there may be a blow up this year and a lot of dirty linen washed. I won't be surprised if there should be an enquiry since this year's dealings have become the talk of the town at all levels.....”

It is further in evidence that on 18th September 1971, Cambata, Captain, Rao, Krishnan, Pat Dimney, Ramachandran and others met Vedanarayanan in the Secretariat and requested for the withdrawal of the stop-payment orders. Vedanarayanan expressed his helplessness and said that the orders had come from the Chief Minister who had taken over direct control of the aerial spraying programme. This fact has been deposed to by all these persons, in their depositions/affidavits before the Commission, and also in their statements recorded under S. 5-A, by the Investigating Officers.

Cambata and his companions have further stated that when they, thereafter, met Shri P.U. Shanmugham, the new Minister for Agriculture, and placed their grievances before him, he bluntly told them that he was not concerned with the matter. Thereafter, four of the Operators, namely, Cambata, Captain, Rao and Dastoor met Vaithialingam and explained their difficulties in detail. They were asking for reduction in the rate of commission demanded by the Chief Minister. Vaithialingam asked them to meet him again in the evening at about 6 p.m. On receiving a telephone call, they went and met Vaithialingam. The latter told them that the Chief Minister did not want to see them, but desired to communicate to them, that if they did not pay the agreed commission at 90 paise, immediately in advance, without any vouchers, they would not receive any payment of their bills and the aerial spraying contracts would be cancelled.

Cambata and Captain have testified that on hearing this decision of the Chief Minister, the Operators were shocked. They pleaded that it was not possible for them to pay any commission without receiving vouchers, evidencing such payment. Further they expressed their inability to pay more than 80 paise per acre, and added that they would be able to make such payment only if their pending bills were paid. They impressed upon Vaithialingam that they had no income “off-the-record” and the payment of the commission was required to be shown by the Companies in their accounts for income-tax purpose. Vaithialingam firmly told him that the Tamil Nadu Government was not concerned with their difficulties, and that if they did not pay the commission “off-the-record”, as demanded, they would not be able to do any further work in Tamil Nadu. When the Operators were saying that they could not pay any commission without vouchers, Vaithialingam told them that one of them, H.P. Rao, had already paid Rs. 25,000 without vouchers to the Chief Minister, and as a result, Rao's Company was getting regular payments. This was another shock for the Operators. After conferring separately for some minutes, they returned to Vaithialingam, who, as a result of further pleadings by the Operators, told them that the only concession that he could agree to was that they should return on the 22nd September 1971, with 50 per cent of the commission, i.e., 45 paise per acre, in respect of the work done up to the 19th September, 1971, for payment to the Chief Minister. Vaithialingam made it clear to the Operators that there was no question of cheques and the amount to be paid should be in currency notes as was done already by H.P. Rao.

S.A. Ramachandran described this incident in his typical style, in his letter, dated the 20th September, 1971 (Ex. CW-4/16), written to Jehangir R. Modi at Bombay. He wrote :

“Aesop's Fables were re-enacted here over the last week end. In the place of King Log the operators got King Stork like the frogs in the Aesop's Fables. The C.M. whom they met yesterday categorically told them to make payment without voucher of 90 paise per acre and has dictated his own terms and also the penalty for lapses. If anyone does not pay he does not get his bills paid for work done so far and also does not get any further allotment. Rao who has been the villain of the piece here has already paid his—I hear—full share at 90 paise per acre and has become the good boy in the lot. I am sure you must have heard first hand all this from the members of the committee who visited Madras last week-end and conducted the final discussions. In the meantime all payments have been stopped and the D.A.O's who always, wait for opportunities for inactivity, I believe, have taken refuge under these latest instructions and also withholding payment of our last year's dues. Upon receipt of your telegram I have called on the Deputy Director, Plant Protection and at my request he is telephoning the Deputy Directors in the various regions to ask the D.A.O's to despatch to us the drafts in respect of last year's work at least as far as the Rs. 40,000 which has been sanctioned by the D.A. I understand by the coming wednesday the D.A. will take a decision regarding the penalty to be collected from the defaulting Operators last year and I am afraid the C.M. will try to interfere here also since he is a vindictive man and try to visit his wrath on those who do not toe the line

drawn by him for this year's work. No doubt the operators this year have to get to shell out 45 paise per acre so far sprayed by Wednesday and the balance within a week from receipt of payment. Very stiff terms no doubt."

This letter is infinitely the best evidence of the demand by the Chief Minister at the rate of 90 paise per acre and his direction to pay half of the same, i.e., at the rate of 45 paise per acre with regard to the acreages already sprayed, by Wednesday the 22nd September, 1971, and the balance 45 paise per acre a week thereafter. I have consulted the calendar, "Wednesday" mentioned in the penultimate sentence of this letter, falls on "22nd September 1971". This letter also shows how unwilling the Operators were to pay this gratification.

According to S.A. Ramachandran even earlier, he had received clear directions from his principal, J.R. Modi, through a telegram, dated 20th August 1971 (Ex. CW-4/12), emphasising the extreme undesirability of making any non-receipted payment and paying any 'commission' exceeding 75 paise per acre. Subsequent events fully justified Modi's apprehension.

It is in evidence that thereafter, the Operators returned to Bombay and consulted their lawyers. I have already extracted, in a foregoing part of this report the account given by Cambata, in regard to this situation and the extremely difficult position in which the Operators found themselves entrapped. They found that they had no alternative but to meet the extortionist demand. To use the words of R.H. Captain (CW-2) :—

"We realised that we were victims of an extortion plan and had no alternative but to pay the money."

Regarding the alleged payment of Rs. 1,17,273 on 22nd September 1971—

On 22nd September 1971, all the Operators raised amounts for making their respective contributions and proceeded to Madras where they met at the Connemara Hotel. What happened at the hotel and thereafter, may be described in Cambata's own words :

".....at the Connemara Hotel where each Operator was asked to prepare an envelope with the necessary currency notes according to a statement prepared on the basis of 45 paise per acre for all the work executed by the 19th of September, 1971. Mr. Krishnan prepared that Master List giving the necessary data. The amount was put in the envelopes and the envelopes were marked with the amounts in them and the name of the Operator. They were then put in my brief case. Fearing that my brief case would also go, as it was rather expensive, I suggested that we buy a cheap plastic brief case from the Bazaar and hand the money in that brief case to Mr. Vaithialingam. Somebody was sent to purchase that brief case, which was brought and the money put in it. The Master List was prepared, in duplicate; one was meant for our record and the other was put in the brief case along with the money. We then telephoned Mr. Vaithialingam who asked us to come over to his residence. Since we did not know his residence, we were taken there in a taxi by Mr. James Frederick. Mr. Vaithialingam had also requested on telephone that only two members should come to his house. However, most of the members came to his house and waited outside. Myself, Mr. Captain, and Mr. Dastoor went into the first room of Mr. Vaithialingam's house. Mr. Vaithialingam came and met us, took the brief case from me, opened it, looked at the envelopes and tallied the writings on them with the copy of the statement, but did not count the money. He then asked us to leave, saying that he would let us know the next date of payment. We went outside and told the other members that the first payment had been made. We saw Mr. Vaithialingam leaving his house in the brief case, in his car."

The total amount paid on this occasion was Rs. 1,17,273. The direct evidence with regard to this payment has been given by Cambata, R. H. Captain and Vaithialingam. Krishnan and J. K. Maneckji, who were with Cambata before and after the making of the payment on 22nd September 1971, have given corroborative evidence about the contributions made by their Companies towards the payment. They have stated that on returning to the Connemara Hotel after making this payment, they were told by Cambata about the fact of making the payment to Vaithialingam for transmission to the Chief Minister.

J. K. Maneckji deposed that the amount contributed by his Company towards this payment was Rs. 18,153. It is in the evidence of J. K. Maneckji and Krishnan that their Companies have contributed on 22nd September 1971 towards this payment to Vaithialingam, sums of Rs. 18,153 and Rs. 24,750 respectively. They had also gone to Madras on that date and made these contributions at the Connemara Hotel, but they did not accompany Cambata when he made the payment of the pooled amount, to Vaithialingam.

S. A. Ramachandran, who was also at the Hotel, corroborates Cambata and Captain, inasmuch as he says that on their return, he was also told about the payment made to Vaithialingam.

R.H. Captain (CW-2), testified that on this occasion the contribution by his Company towards this payment was Rs. 18,000. Similarly, according to Cambata, his Company's contribution was Rs. 22,700.

Khemka has, in his affidavit, stated that his Company had contributed Rs. 10,720 towards this payment made through Vaithialingam.

Suresh Sanghi, in his affidavit, has stated that his Company's share towards this payment was Rs. 450 which he had sent to Shri Cambata for further transmission.

Pushpaka Aviation did not contribute in cash anything on this occasion, but the payment already made separately, by Rao to the Chief Minister through Vaithialingam on 13th August 1971 on behalf of his Company, was duly adjusted towards the share of that Company in this payment on 22nd September 1971. Shri Rao's payment was accounted for in the Master List, which was prepared on this occasion.

The evidence of Cambata, Captain, J. K. Maneckji, C.P. Khemka, Suresh Sanghi, H.P. Rao, and Krishnan stands further corroborated by the statement (Ex. CW-2/16), which is a copy of the Master List prepared for the subsequent payment made to Shri Anbil Dharmalingam on 11th October 1971. Precise copy of the Master List which was handed over to Vaithialingam could not be found. But in Ex. CW-2/16, the figures of the previous payment made on 22nd September 1971, have been carried over. The figures thus carried over lend assurance to the Operators' statements about the contributions made by the individual Operators towards the collective payment made on 22nd September 1971 to Vaithialingam for the Chief Minister. The List, Ex. CW-2/16, was scribed by Cambata and was prepared on the basis of the facts and figures collected through Krishnan from the Office of the Director of Agriculture.

Further corroboration of an unimpeachable and independent character with regard to the contributions raised by the various Operators for this payment, is furnished by the entries in the account books of these Aircraft Companies. These amounts had been drawn by the Companies through cheques and vouchers from their accounts. The entries in the books of some of the Companies, show these amounts as expenditure incurred towards the payment in Tamil Nadu as "acreage commission". For instance, in the Cash Book of M/s. AV-India represented by its Managing Director, R. H. Captain, there are two entries, one at page 47 marked Ex. CW-11/4-00 (i) and the other at page 50 marked Ex. CW-11/4-00 (ii). The entry at page 47 is dated 17th September 1971, and the other at page 50 is dated 21st September 1971. The entry at page 50 is to the effect: "By commission paid to R. H. Captain for payment in Tamil Nadu as acreage commission". Similarly, the entry at page 47 shows that Rs. 8,000 were handed over to R. H. Captain on 17th September 1971 for payment towards the 'commission account' for Tamil Nadu. Thus, on these dates, a total amount of Rs. 22,400 was drawn by R. H. Captain on account of AV-India (Private) Limited, for payment of commission. Out of it, according to his own evidence, he contributed Rs. 18,000 as share of his Company towards the payment made on 22nd September 1971.

According to the entry, dated 15th September 1971, at page 90 of the Cash Book of Cambata Aviation (Private) Limited, an amount of Rs. 11,319.25 has been debited towards "promotional expenses at 25 paise per acre for 25,000 acres—90 per cent payment of 14,970 acres at 25 paise per acre". There are two corresponding vouchers, dated 15th September 1971 [Ex. GW-8/30 (A)] and Ex. CW-8/30 (B), for Rs. 7,965 and Rs. 3,353.25. The payment of this amount was not effected at that time but sometime after the negotiations for payment of the commission had reached the final stage. The entry dated 21st September 1971, at page 69 of the Cash Book shows Rs. 17,500 were incurred as "Madras Operational Expenses". The corresponding cash voucher is dated 21st September 1971 [Ex. CW-8/30 (C)] for Rs. 17,500. This also shows that the amount was drawn for expenditure towards "Madras Operational Expenses". It may be noted that originally, as explained by Cambata, out of Rs. 11,319.25 of 15th September 1971 Rs. 11,000 stands entered in the ledger of this Company at page 152 under the heading "Operational Expenses", and Rs. 17,500 have also been shown for "Operational Expenses". Thus, on 15th September 1971, Cambata had drawn a total amount of Rs. 28,819.25 *inter alia* towards payment of the "commission". On 15th September 1971, Cambata was thinking of paying commission in advance at the rate of 25 paise per acre only (*vide* Cambata's explanation of the expression "necessary documents" in the telegram, Ex. CW-7/W7). Calculated at this rate the total amount would have been Rs. 11,319.25. But at the meeting held on 19th September 1971 with Vaithialingam, the Operators were compelled to agree to pay 90 paise per acre in advance, in two instalments of 45 paise per acre. Consequently, Cambata had to draw from the Company's account two further amounts so that he had cash more than Rs. 22,700 for payment to Vaithialingam, on 22nd September 1971.

The entries in the account-books of the other Companies, also (excepting of Mahindra and Mahindra), who had contributed towards this payment, show withdrawals of amounts within a week or so, preceding the date, 22nd September 1971, in excess of the respective contributions made by them.

Such corroborative evidence has been indicated with reference to their books, in the consolidated chart prepared by me, in Annexe 'A'.

The payment made on 22nd September 1971 receives further corroboration from the telling circumstance that immediately thereafter on 22nd September 1971, the Chief Minister through his Private Secretary, Vaithialingam, conveyed the orders on telephone to Hari Bhaskar to clear forthwith the pending bills of the Operators. Hari Bhaskar accordingly instructed the Deputy Director, Marar, who recorded the Office Note (Ex. C.W-9/24), dated 23rd September 1971, and issued a circular, dated 24th September 1971, (C.W-7/10), directing the District Agriculture Officers to settle all the outstanding bills for 1970-71 and 1971-72 in respect of the work done till that date, and to send all the bills for the work done during the subsequent period to the Directorate for scrutiny and return. The oral evidence of Vaithialingam and Hari Bhaskar with regard to these facts is supported by the undisputed official documents mentioned above. It is noteworthy that directions were issued for clearance of the pending bills *only in respect of the work done up to that date*. Obviously, this restriction was retained to keep up the pressure on the Operators for payment of the future instalments of the commission.

The truth of the evidence rendered by the Operators who paid the money, and Vaithialingam who received it, is further re-assured by the letter, dated 23rd September 1971, (Ex. CW-4/17), written by S. A. Ramachandran to his Company at Bombay. It reads :

"Now that the payment has been made last evening, I hope the stop-payment instructions will be revoked during the course of this day. I am proceeding to the office of the Director of Agriculture and shall personally see that these letters are posted to various D.A.Os during today so that the letters catch today's mail."

During the examination before the Commission, S. A. Ramachandran (C.W-4) clarified that the words "payment has been made last evening" referred to the payment made to Vaithialingam on 22nd September 1971 at his residence. As already observed, after the payment, on reaching Connemara Hotel, Cambata and his companions had posted S. A. Ramachandran and the other Operators who had stayed behind, with the necessary facts, including the fact of making the payment to the Chief Minister.

Alleged payment of Rs. 1,41,650 on 11th October 1971 to Shri Anbil.

It is in evidence that before all the Operators could avail of the benefit of the release-payment orders issued as a consequence of the payment made in the evening on 22nd September 1971, Shri Anbil Dharmalingam was reinstated on October 4, 1971 as Minister for Agriculture. Immediately on his reinstatement, he verbally directed Hari Bhaskar to stop all further payments of the bills of the Operators. The Operators came to know about this stop-payment order on October 4, 1971, on telephone, from their local representative, James Fredrick. The Operators were perplexed and alarmed. Cambata has testified that on receiving this information, he and Captain rushed down to Madras, and along with James Fredrick, met Shri Anbil Dharmalingam on 5th October 1971. They found the Minister extremely annoyed. The Minister wanted to know why they had not paid the money as promised. Cambata and his companions told the Minister that only a short time back, i.e., on 22nd September 1971, they had paid over a lakh of rupees to the Chief Minister through his private secretary, Vaithialingam. The initial reaction of the Minister was that he was not concerned with that payment because he (the Minister) had been instructed by the Chief Minister to collect the money, himself, from the Operators. After a good deal of argument from his side, and pleadings by the Operators, the Minister softened and agreed that after taking into account the commission paid at the rate of 45 paise per acre to the Chief Minister, they should pay the balance of the commission for the same period, i.e., acreages covered up to 19th September 1971 at the rate of 45 paise per acre. The Operators submitted to do so. The Minister further reminded Cambata and his companions, that H. P. Rao who had not contributed towards the payment to the Chief Minister on 22nd September 1971, should also be asked to pay his share on the 11th October 1971, which was the date fixed by the Minister for the payment of the commission to him. The Minister thus confirmed that he was already aware of the payment made by H. P. Rao to the Chief Minister and the fact of his not having contributed towards the payment made on 22nd September 1971 to the Chief Minister through Vaithialingam. This circumstance definitely points to the conclusion that both Shri Karunanidhi and Shri Anbil Dharmalingam were acting in concert in squeezing out these gratifications in the shape of the commission from the Operators.

It is further in evidence, that thereafter, Cambata and Captain returned to Bombay, called a meeting of the Association and told the members about the demand made by the Minister and the latter's peremptory direction to make the next collective payment of the "commission" on 11th October 1971. As usual, Cambata asked Krishnan to prepare the Master List after collecting the necessary data from the Office of the Director of Agriculture, on the basis of which, the amounts to be contributed by the individual Operators towards the next payment were to be calculated. Accordingly, Krishnan prepared the statement (C.W-8/23) showing the acreage sprayed by each Operator up to 4th October 1971. Cambata got copies of the statement based on the figures given by Krishnan prepared in his office, and circulated the same to the members of the Association requesting them to make the contributions on its basis. Accordingly, all the Operators withdrew monies from the accounts of their Companies.

It is in evidence that on 11th October 1971, Cambata, Captain and the other Operators went to Madras and assembled at the Connemara Hotel. Krishnan and H. P. Rao also joined them. As before, the various Operators enclosed their contributions in separate envelopes, marked them and put them in a brief case which was then carried to the residence of Shri Anbil Dharmalingam. There, Cambata handed over the brief case, containing the money, to the Minister. On seeing the Operators, the Minister asked: "Have you brought the money?" Cambata and his companions replied in the affirmative. Cambata then handed over the brief case to the Minister across the desk. The Minister opened the brief case, glanced at one or two envelopes and the Master List and then closed the brief case and smiled at the Operators. Cambata said: "As per your request and orders we have brought the money on the date stipulated by you and we sincerely hope that orders will now be given for our bills to be paid". Cambata again reminded the Minister that the Operators had signed a legal contract at the instance of the Minister, with Rajagopal, and nothing had been done by the Minister to see that the contract with Rajagopal was cancelled. The Minister assured: "Cambata don't worry. Rajagopal, my man I fix him".

Cambata has testified that C.W-2/16 is the copy of the Master List which was prepared by him in his own hand on 11th October 1971. This copy of the List had been retained by the Operators for their own record. This document was also one of the records seized by the Income-tax authorities in the raid at the Head Offices of the Companies at Bombay on 23rd October 1972. This Master List shows the break-up of the payments made not only on 11th October 1971, but also on 22nd September 1971. It also shows the period covered and the acreages sprayed by the individual Operators during that period; and may be extracted:

<i>Name of Operator.</i>	<i>Period.</i>	<i>Acreage.</i>	<i>Amount paid on 21st September 1971.</i>	<i>Amount paid on 11th October 1971.</i>
(1)	(2)	(3)	(4)	(5)
			RS.	RS.
Agricultural Aviation	6th August 1971 to 19th September 1971.	55,000	24,750	24,750*
Av-India	Do.	40,000	18,000	18,000*
Cambata Aviation	6th August 1971.	50,307	22,700	22,577
Mahindra and Mahindra ..	Do.	50,000	22,500	22,500
Maneckji Aviation	Do.	40,340	18,153	18,153
Pushpaka Aviation	Do.	55,000	25,000	24,500
Khemka Aviation	Do.	23,823	10,720	10,720
Sanghi Aviation	Do.	1,000	450	450
		3,15,470	1,42,273	1,41,650

(* Indicated by a line—as ditto.)

The caption of the 4th column indicates the break-up of the payment made through Vaithialingam, earlier. The date "21st September 1971" appears to be an obvious mistake for 22nd September 1971, or, may be the Master List for making the payment on 22nd September 1971 was prepared on 21st September 1971, and consequently, that date was carried over to this List.

The direct evidence for making this payment on 11th October 1971 to Shri Anbil Dharmalingam is to be found in the evidence of Cambata, Captain, Rao, Khemka, Krishnan, Pat Dimney and James Fredrick. These witnesses have also deposed to the amounts contributed on behalf of their respective Companies, viz., Cambata Aviation, Av-India, Pushpaka Aviation, Khemka Aviation, Agricultural Aviation, Maneckji Aviation and Sanghi Aviation, which on this occasion were Rs. 22,577, Rs. 18,000, Rs. 24,500, Rs. 10,720, Rs. 24,750, Rs. 18,153 and Rs. 450, respectively. Dastoor of Mahindra and Mahindra Aviation, who was also present and contributed towards this payment, has not given any statement, but from the Master List (CW-2/16) it appears that he had also contributed Rs. 22,500 on this occasion. Thus, a total amount of Rs. 1,41,650 was paid to the Minister on this occasion by the Operators, as gratification in the shape of 'commission'.

Again, corroboration of the contributions made by the individual Operators towards this payment is to be found in the account books of their Companies. Reference in this connection may again be made to the consolidated chart appended hereto as Annexure 'A', showing the break-up of the various payments made by the Operators, either individually or collectively, to Vaithialingam for the Chief Minister, and to the Minister, Shri Anbil Dharmalingam, directly.

After making this payment, the Operators met Hari Bhaskar and informed him that they had made the payment and therefore their bills should be cleared for payment. Hari Bhaskar, in his evidence confirms this fact. Hari Bhaskar thereupon got cleared their bills. This circumstantial evidence of immediate clearance of the bills of the Operators after the receipt of this payment, lends further assurance to the oral testimony of the Operators.

It is in evidence that at Cambata's request Krishnan again collected the necessary information, from the Director's Office, and prepared the statement, (CW. 2/17) containing the necessary data, and showing the amounts to be contributed by the Operators for the next payment on 25th October 1971, on the basis of the acreages covered from 6th August 1971 to 4th October 1971, Cambata got more copies prepared of its carbon copy received from Krishnan. He circulated these copies to the Operators on 13th October 1971.

The alleged payment of Rs. 41,714 on 25th October 1971 to Shri Dharmalingam.

Accordingly, once more Cambata, Captain, Krishnan and the other Operators assembled at Connemara Hotel on 25th October 1971, and following the same procedure, as before, put their contributions in a brief case after enclosing them in separate envelopes. The brief case containing the pooled amount, was then taken by Cambata and his companions to the residence of the Minister, Shri Anbil Dharmalingam, and delivered to him.

Direct evidence with regard to this payment is given by Cambata, Captain, Krishnan, Rao and Pat Dimney. They have also deposed to the contributions made by their respective Companies towards this payment. The Master List (Ex. CW-2/17) confirms that on this occasion, Agricultural Aviation, Av-India, Cambata Aviation, Mahindra and Mahindra Aviation, Maneckji Aviation, Pushpaka Aviation contributed Rs. 6,840, Rs. 3,905, Rs. 6,174, Rs. 10,404, Rs. 4,815 and Rs. 9,676 respectively, towards the total payment of Rs. 41,714.

Alleged payment of Rs. 52,676 on 6th November 1971 to Shri Anbil.

The *third* payment of the commission was made by the Operators to Shri Anbil Dharmalingam on 6th November 1971. The total amount paid on this occasion was Rs. 52,676. The contributions made by Agricultural Aviation, Av-India, Cambata Aviation, Mahindra and Mahindra Aviation, Maneckji Aviation and Pushpaka Aviation were Rs. 11,250, Rs. 3,905, Rs. 6,174, Rs. 11,250, Rs. 8,847 and Rs. 11,250, respectively.

Khemka Aviation and Sanghi Aviation did not contribute anything towards the payment on 25th October 1971 and 6th November 1971 because during the relevant period they had not done any spraying work.

The direct evidence with regard to this payment is given by Captain, H. P. Rao, Krishnan and Pat Dimney. Cambata could not, due to illness, come on this occasion. He therefore authorised Captain, Vice-President of the Association to do the needful. Cambata also handed over the contribution, which fell to the share of Cambata Aviation to Captain for onward transmission to the Minister. A copy of the Master List (Ex. CW-2/18) was handed over along with the money to the Minister.

Alleged payment of Rs. 53,359 to the Minister on 25th November 1971.

The next payment was to be made by the Operators on 25th November 1971. Before the Operators proceeded to Madras, they received a telegraphic notice (Ex. CW-8/27), dated 15th November 1971, (later confirmed by a letter), from the Counsel for Ponnee Enterprises, claiming a sum of Rs. 3,38,960 as commission due to them from the Operators. The Operators convened a meeting of the Association on 24th November 1971 and discussed the matter. As advised by Cambata, Krishnan prepared a consolidated statement showing the acreages covered by the Operators till 12th October 1971 and 26th October 1971. Subsequently, Krishnan conveyed to Cambata that according to the records of the Director of Agriculture, the total area sprayed by the individual Operators as on 16th November 1971, was 6,16,500 acres. Krishnan prepared and sent the statement (Ex. CW-2/19) showing the acreages done and the amounts to be contributed by the various Operators; the total of such amounts worked out Rs. 93,733.

On 25th November 1971, the Operators as before, assembled at Connemara Hotel. On this occasion, Captain Dastoor and Rao did not come, nor did they send their contributions. The contributions made on behalf of their respective Companies, on this occasion, by Cambata, Krishnan, Khemka, Maneckji and Sanghi were Rs. 8,988, Rs. 22,680, Rs. 3,484, Rs. 17,037 and Rs. 1,170 respectively.

According to the statement, Ex. CW-2/19, prepared by Krishnan, Av-India represented by Captain, had to contribute a sum of Rs. 6,535. Mahindra and Mahindra Aviation represented by Dastoor, had to contribute Rs. 16,236, and Pushpaka Aviation represented by H. P. Rao, had to contribute Rs. 17,603. Against the names of these three Companies which appear at Serial Nos. 2, 5 and 7 in that statement (Ex. CW-2/19), cross-marks have been put which indicate that these three did not contribute towards the collective payment made on this occasion. It is in the evidence of Pat Dimney that representatives of these Companies did not come on that day, nor sent their contributions. Captain has also stated that he did not go. H. P. Rao has stated that he did not make any contribution on this occasion, nor did he himself go there. Thus the total amount actually collected and paid as 'commission' on this occasion was Rs. 53,359.

Captain, Krishnan and Rao have in their statements before the Commission however, stated that the amount paid on this occasion was Rs. 93,733. Captain and Rao, according to their own admission, did not go and contribute on this occasion. Krishnan has obviously stated so wrongly owing to some confusion. While deposing so, the witnesses were misled by the total in the List (Ex. CW-2/19) which was before them. They evidently overlooked the cross-marks put against Av-India, Mahindra and Mahindra and Pushpaka Aviation in this statement.

Krishnan has in his statement recorded under S. 5-A, stated that on 25th November 1971, the Minister, Shri Anbil Dharmalingam, while receiving the money in the brief case which was handed over by Cambata, checked up its contents with the statement and the amounts mentioned on the envelopes and thereafter, asked Cambata why R. H. Captain, Dastoor and H. P. Rao had not come to pay their shares. Shri Cambata informed him that Shri Dastoor could not come because of illness and Shri Rao and Captain were otherwise occupied. On this, Shri Anbil Dharmalingam asked him to see that they must pay their shares in the next meeting.

I shall deal with this point further while discussing the evidential value of the various statements or Master Lists, together, which were prepared by the Operators for the purpose of raising contributions and making payments of this 'commission' to the Minister/Chief Minister. Suffice it to say here, that out of the three defaulters on this occasion, two, namely, H. P. Rao of Pushpaka Aviation and P. G. Dastoor of Mahindra and Mahindra Limited, seem to have paid subsequently and separately, what was payable from them on 25th November 1971.

Alleged payment of Rs. 64,502 to the Minister on 23rd December 1971.

The last payment of the 'commission' made by the Operators to Shri Anbil Dharmalingam was on 23rd December 1971. A total sum of Rs. 64,502 was paid to the Minister on this occasion. It is in evidence that the contributions made towards this payment by Av-India, Cambata Aviation, Mahindra and Mahindra, Maneckji Aviation, Pushpaka Aviation, Khemka Aviation and Sanghi Aviation were Rs. 6,535, Rs. 8,988, Rs. 15,390, Rs. 13,005, Rs. 15,930, Rs. 3,484 and Rs. 1,170 respectively.

Direct evidence with regard to this payment is given by Cambata, Rao, Sanghi, Pat Dimney and Khemka who were present at the time of making this collective payment to the Minister at his residence. Their evidence stands corroborated by the documentary evidence, i.e., the statements, Ex. CW-3/5, Ex. CW-2/19, and the consolidated statement of all such payments, Ex. CW-2/20 which I shall presently notice in detail. The entries in the account books of these Companies also lend assurance with regard to the fact that amounts were withdrawn by most of the representatives of these Companies from their accounts for incurring expenditure which is described as 'promotional expenses' or 'operational expenses', etc.

Master Lists/Contribution Statements.

It will be appropriate at this place to consider the evidential value of the various statements/Master Lists which were prepared by the Operators in connection with these payments.

I have already observed above that no copy of the Master List which was handed over to Vaithialingam along with the money on 22nd September 1971, is on the record. However, a copy of the Master List, Ex. CW-2/16, which was prepared on the occasion of the payment made to the Minister, Shri Anbil Dharmalingam, on 11th October 1971, is on the record. I have extracted it in a foregoing part of this Report. It is not necessary to reproduce the same again. It may however, be re-emphasised that the contents of this document, Ex CW-2/16, not only show the contributions made by the Operators towards the payment made on 11th October 1971, but also the shares contributed by the individual Operators towards the payment made to the Chief Minister on 22nd September 1971 (wrongly mentioned there as 21st September 1971) through Vaithialingam. Cambata has proved this statement Ex. CW-2/16. He is the scribe of it.

It will be appropriate at this place to consider the evidential value of the various Statements/Master Lists which were prepared by the Operators for the purpose of raising contributions and making payments of commission calculated at the rate of 90 paise per acre in respect of the acreages covered during a particular period. Apart from the affidavits of the Income-tax Commissioner, Shri V.V. Badami, and the Income-tax Officer, A.K. Suryanarayanan, it is in evidence that these statements were prepared on the basis of the figures about acreages covered, taken from the office of the Director of Agriculture. Hari Bhaskar has testified that he had off and on supplied such information to the representatives of the Operators, and also to the Minister.

In his supplementary affidavit Shri R.P. Kapur has stated that these documents including the Statements/Master Lists, Ex. CW-2/16, CW-2/17, CW-2/18, CW-2/19, CW-3/5 and Ex. CW-2/20, were among those records which were seized by the Income-tax authorities from the office of the various Companies, particularly Cambata Aviation(P) Ltd., on 23rd October-1972, and were later during the investigation of the criminal case, taken over from the Income-tax authorities by the witness on 4th September 1973. The Master Lists/documents aforesaid were in the file which in the inventory of records seized on 23rd October 1972, by the Income-tax authorities from the office of Cambata Aviation (P) Ltd., is shown as "one yellow file styled as Government of Tamil Nadu containing pages 1 to 215". Ex. CW-2/20 was also in that file. This file together with the aforesaid Exhibits and other records was taken over by Shri R.P. Kapur from the Income-tax authorities on 4th September 1973. The document Ex. CW-2/20 bears the signature of the Assistant Director of Inspection, Income-tax Department, in token of its seizure on 23rd October 1972. These documents were written in the ordinary course of their business affair by the Operators at a time when this controversy had not arisen. There can therefore be no doubt what ever about their genuineness.

Now I will take up these documents one by one.

In the chronological order, the first of these statements/Master Lists in Ex. CW-2/16. I have already observed above that no copy of the Master List which was handed over to Vaithialingam is on the record. However a copy of the Master List, CW-2/16, which was prepared on the occasion of the payment made to the Minister, Shri Anbil Dharmalingam on 11th October 1971, has been duly proved and led in evidence. I have extracted it earlier and it is not necessary to repeat it here. Mr. Cambata who had prepared it on the basis of the data collected from the office of the Director of Agriculture has vouched for its correctness. He is the scribe of this document. The contents of this document, Ex. CW-2/16, not only show the contributions made by the individual Operators towards the collective payment made on 11th October 1971 to the Minister, but also the previous contributions made by the individual Operators towards the collective payment made to the Chief Minister on 22nd September 1971 (wrongly mentioned in the document as 21st September 1971), through Vaithialingam.

The next of such Statements or Master Lists is Ex. CW-2/17. It reads as under :—

Name of Operator.	Period.	Total acreage done acres.	Total acreage paid for acres.	Balance to be paid acres
(1)	(2)	(3)	(4)	(5)
1. Agricultural Aviation Ltd...	6th August 1971 to 11th October 1971.	70,200	55,000	15,200
2. AV-India	"	48,677	40,000	8,677
3. Cambata Aviation Pvt., Ltd.	"	64,027	50,307	13,720
4. Mahindra & Mahindra ..	"	73,120	50,000	23,120
5. Maneckji Aviation ..	"	51,040	40,340	10,700
6. Pushpaka Aviation Pvt., Ltd.	"	76,282	55,000	21,282
7. Khemka Aviation Pvt., Ltd.	"	23,823	23,823	"
8. Sanghi Aviation	"	1,000	1,000	"

Balance Amount to be paid on 25th October 1971.

Rs. 6,840.00
 Rs. 3,904.65
 Rs. 6,174.00
 Rs. 10,404.00
 Rs. 4,815.00
 Rs. 9,576.90

It is in the evidence of Krishnan and Cambata that the body writing of this document was scribed by Krishnan, while the lower part of the document showing the amounts to be contributed by each of the Operators towards the payment of 25th October 1971, is in the hand of Miss Dastoor who was then employed as Secretary to Cambata in the office of his Company.

The copies of such Master Lists were prepared before hand. Cambata used to get those copies prepared on the basis of the facts and figures collected by Krishnan from the office of the Director of Agriculture and supplied to the Association. One of the copies of such statements was invariably handed over along with the money to the payees.

This document, Ex. CW-2/17, goes a long way to confirm the evidence of Cambata, Krishnan and the other operators with regard to this payment made on 25th October 1971 and the contributions made by the individual Operators.

Next is Ex. CW-2/18. This statement according to the evidence of Captain and Cambata, was scribed by Krishnan, while the lower part of the document is in the hand of Captain. Krishnan was however not sure as to who was the scribe of this document. After some preverification he stated that it was written by Captain. Anyway, all are agreed that the copy of this statement/ Master List was handed over along with the money to the Minister, Shri Anbil Dharmalingam, on 6th November 1971. This statement is as under :

<i>Name of Operators.</i>	<i>Acres done as on 12th October 1971.</i>	<i>Second instalment.</i>		<i>First instalment.</i>		<i>Total amount.</i>
		ACRES.	RS.	ACRES.	RS.	
1. Agricultural Aviation ..	80,000	15,200	6,840	9,800	4,410	11,250
2. AV-India	48,677	8677	3,905	Nil.	Nil.	3,905
3. Cambata Aviation ..	64,027	13,720	6,174	Nil.	Nil.	6,174
4. Khemka Aviation ..	23,857	Nil.	Nil.	Nil.	Nil.	..
5. Mahindra & Mahindra ..	75,000	23,120	10,404	1,860	846	11,250
6. Maneckji Aviation ..	60,000	10,700	4,815	8,960	4,032	8,847
7. Pushpaka Aviation ..	80,000	21,282	9,577	3,718	1,673	11,250
8. Sanghi Aviation	1,000	Nil.	Nil.	Nil.	Nil.	..
						<hr/> 52,676.00 <hr/>
Balance 50 per cent up to 4/10 50 per cent 4 to 12/10.						
Balance 50 per cent 4/10 to 12/10 50 per cent from 12/10 to 30/10.						

This document cogently corroborates the evidence of Captain, Krishnan, Cambata and the other Operators with regard to the payment made on 6th November 1971 and the contributions made by the individual Operators.

The fourth Statement or the Master List is Ex. CW-2/19. This Statement was prepared by Krishnan after collecting the necessary facts and figures from the office of the Director of Agriculture and was thereafter sent to Cambata, President of the Association, under cover of his letter (Ex. CW-3/3), dated 19th November 1971, Ex. CW-2/19 reads as under :

Name of Operator.	Acreage done as on 16th November 1971.	Second Instalment		First instalment.		Total amount.
		Acres.	Amount.	Acres.	Amount.	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
			RS.		RS.	RS.
1. Agricultural Aviation (P) Ltd.	1,20,600	9,800	4,410	40,600	18,270	22,680
x2. Av-India	63,200	Nil.	Nil.	14,523	6,535	6,535
3. Cambata Aviation Pvt., Ltd.	84,000	Nil.	Nil.	19,973	8,988	8,988
4. Khemka Aviation Pvt., Ltd.	31,600	Nil.	Nil.	7,743	3,484	3,484
x5. Mahindra & Mahindra Ltd.	1,09,200	1,880	846	34,200	15,390	16,236
6. Maneckji Aviation (P) Ltd.	88,900	8,960	4,032	28,900	13,005	17,037
x7. Pushpaka Aviation (P) Ltd.	1,15,400	3,718	1,673	35,400	15,930	17,603
8. Sanghi Aviation (P) Ltd. ..	3,600	Nil.	Nil.	2,600	1,170	1,170
				Total ..		93,733

This is an important document. Cross marks appearing in it against the names of Av-India, Mahindra & Mahindra Ltd., and Pushpaka Aviation (P) Ltd., are significant. Read along with the oral evidence, already discussed, on the record, they indicate that these three Operators did not on this occasion contribute their shares towards the collective payment made on 25th November 1971. It will be presently noticed that two of these defaulters, Mahindra and Mahindra Ltd., and Pushpaka Aviation appear to have subsequently, but separately, paid their shares which were payable by them on 25th November 1971, to the Minister. In this connection it will be useful to refer to another statement Ex. CW-3/5 which was prepared by Krishnan and sent under cover of his undated letter, Ex. CW-3/4. This letter was received by Cambata on 13th December 1971. In this letter Krishnan suggested—a suggestion which was accepted by the Association—that the Operators should not pay any more commission excepting that payable in respect of the acreages covered up to 16th November 1971. The remaining instalment in respect of this acreage covered up to 16th November 1971 was payable, according to the arrangement with the Minister, on December 23, 1971. Thus, the suggestion was that after the payment to be made on 23rd December 1971, further payments to the Minister should cease. This proposal was made by Krishnan in view of the notice received by the Operators from V. Rajagopal on behalf of Ponnee Enterprises for the recovery of Rupees 3 lakhs and odd. There is a significant footnote, in the hand of Krishnan, to the Statement, Ex. C.W-3/5. The footnote reads—

“Plus Ducs from last payment.

Av-India	Rs. 6,535	| Please check whether all have since paid.
M. & M.	Rs. 16,236	
Pushpaka	Rs. 17,603	

Suggest we pay only this, which will mean that acreages up to 16th November 1971 fully paid.”

Read along with the cross-marks appearing against the names of these three Operators in Ex. CW-2/19, it unmistakably shows that these Operators had defaulted in contributing their share towards the collective payment made on 25th November 1971. This footnote when read along with the other evidence, conclusively shows that the Operators did not make any payment to the Minister or the Chief Minister in respect of the acreages covered by them after 16th November 1971.

The last but the most important of these statements is Ex. CW-2/20. The circumstances in which this statement was prepared by the Operators in June 1972 have been deposed to by Krishnan and Captain. After referring to the institution of the suit by Rajagopal on behalf of Ponnee Enterprises, Krishnan testified—

“In June, 1972 I remember, that Dastoor was elected President. He made a consolidated statement of the amounts due to the Minister and the amounts actually paid to the Minister and Mr. Vaithialingam and the balance to be paid which was not paid at all. Copies of that statement had been sent to all the members of Association. I now see Ex. CW-2/20 which is a copy of that statement. The total amount due as commission for the 1971-72 operations to the Minister was Rs. 8,82,360, out of which a total amount of Rs. 5,48,494 was paid in instalments from time to time. The amount which still remained unpaid to the Minister was Rs. 3,33,866.”

In the same strain, Captain has stated that after the institution of suit by Rajagopal on behalf of Ponnee Enterprises, no further commission was paid either to Vaithialingam for the Chief Minister or Shri Anbil Dharmalingam. In 1972, Dastoor became the President of our Association. He met Shri Anbil Dharmalingam who told him that if they were interested in undertaking large-scale

aerial operations the balance of commission should be paid to him. This was sometime after June 1972. Mr. Dastoor conveyed it to the members, including myself, but nobody was interested in taking further operations in the State of Tamil Nadu." Earlier, Captain stated that they had paid Rajagopal at the rate of 15 paise per acre in full settlement of his claim sometime in 1972. The record received from the High Court shows that it was sometime in September 1972, that the suit of Ponnee Enterprises was decided.

The witness in this connection, also, referred to the consolidated statement, Ex. CW-2/20. Thus, the object of preparing this consolidated statement, Ex. CW-2/20, showing all the previous payments made to the Minister/Chief Minister, the acreages sprayed and the amounts remaining due as so-called 'commission' calculated at the rate of 90 paise per acre, was two-fold: Firstly, to settle the claim of V. Rajagopal on behalf of Ponnee Enterprises, and secondly, Dastoor, who had prepared it in his capacity as President of the Association, wanted to consider whether the Operators would be willing to undertake aerial operations in Tamil Nadu in the year 1972-73 on the condition communicated to them by the Minister, Shri Anbil Dharmalingam, through Dastoor. The condition, as already noticed, was that the Operators should pay the arrears of the commission pertaining to the year 1971-72, and thereafter, a future arrangement could be worked out. The Operators who had already suffered extortion at the hands of the Minister and the Chief Minister, refused to do any further work in Tamil Nadu. This document, Ex. CW-2/20, as already noticed, bears at its back the signature of the Income Tax Officer who had seized it on 23rd October 1972 from the Office of Cambata Aviation (P) Limited. The other connected documents, namely, Ex. CW-2/16, Ex. CW-2/11, Ex. CW-2/18, Ex. CW-2/19, Ex. CW-3/3 (letter) were also in the same record/folder which was seized from the Office of Cambata Aviation (P) Limited and was taken over from the Income-tax authorities by Shri R. P. Kapur, Dy. S.P. (*vide* Shri Kapur's supplementary affidavit). Thus, there cannot be the slightest doubt about the authenticity of all these documents. Ex CW-2/20 reads thus—in page No. 179.

CW-2/20.

AMOUNT DUE FROM AND PAID BY DIFFERENT HELICOPTER COMPANIES IN 1971-72.

Serial No.	Name of Operator.	Total area covered (in lakh).	Total money due at 90 paise per acre.	Money paid upto November 1971.	Money paid on 23rd December 1971.	Total money paid.	Amount still due from them.
			RS.	RS.	RS.	RS.	RS
1.	Cambata Aviation (P) Limited	1.170	1,05,300	66,612	8,988	75,600	29,700
2.	Pushpaka Aviation (P) Limited	1.488	1,33,920	87,930	15,930?	1,03,860	30,060
3.	Mahindra and Mahindra	1.740	1,56,600	82,890	15,390?	98,286	58,320
4.	Maneckji Aviation	1.658	1,49,220	67,005	13,005	80,010	69,210
5.	Agricultural Aviation	1.415	1,27,350	90,270	....	90,270	37,080
6.	AV-India (P) Limited	0.960	86,400	43,810	6,535?	50,345	36,055
7.	Khemka Aviation	0.889	80,010	24,955	3,483	28,439	51,571
8.	Sanghi Aviation	0.276	24,840	2,070	1,170	3,240	21,600
9.	Helicopter Services	0.003	270	....	....	..	270
10.	Aircraft Society	0.205	18,450	18,450	....	18,450	....
	Total	9.804	8,82,360	4,83,992	64,502	5,48,494	3,33,866

The correctness of the figures in these statements/Master Lists including the consolidated statement, CW-2/20, can be arithmetically inter-checked and also checked with reference to the information available from the office of the Director of Agriculture.

It is significant to note that the correctness of the totals of the acreages sprayed during the year 1971-72 by these Operators as given in CW-2/20 were not disputed by Shri Karunanidhi in his published reply sent by him in response to the Prime Minister's letter in 1972. These figures have been reproduced in the Memorandum of the Memorialists. I have also satisfied myself about their correctness with reference to whatever information is available from the office of the Director of Agriculture.

I shall take it that the figures about acreages sprayed by the Operators upto the dates indicated in these statements are correct. On that basis, I would now proceed to inter-check the same by comparison and arithmetical calculation. I will first check up the figures in the consolidated statement, CW-2/20, with reference to the earlier Master Lists/Statements.

First, I take up Cambata Aviation (P) Limited, Ex. CW 2/20 does not show the acreages covered upto 16th November 1971, separately, but includes all the work done by the Operators even thereafter. I would therefore read these figures with reference to the acreages given in the statement, Ex. CW-2/19. According to those figures, Cambata Aviation had covered an area of 84,000 acres as on 16th November 1971. According to the arrangement imposed on the Operators by the Chief Minister and the Minister, they had to pay commission on this area at the rate of 90 paise per acre. The commission calculated at that rate on an acreage of 84,000 works out to Rs. 75,600. This amount exactly tallies with what is shown in the 6th column captioned "Total money paid" in the consolidated statement, Ex. CW-2/20. Further, in this consolidated Statement in the column relating to the payment made on 23rd December 1971, it is written against the name of Cambata Aviation, that this Company paid Rs. 8,988. This figure exactly coincides with what is shown against the name of Cambata Aviation in the Statement, CW-2/19, as payable on 25th November 1971. The 5th column in this consolidated Statement is captioned, "Money paid upto November 1971". In this column against the name of Cambata Aviation, the figure Rs. 66,612 is written. Now the Master Lists, Exhibits CW-2/16, CW-2/17, CW-3/5, CW-2/18 and CW-2/19 show that Cambata Aviation (P) Limited, had contributed Rs. 22,700, Rs. 22,577, Rs. 6,174, Rs. 6,174, Rs. 8,988 and Rs. 8,988 on 22nd September 1971, 11th October 1971, 25th October 1971, 6th November 1971, 25th November 1971 and 23rd December 1971, respectively. The total of these payments, added arithmetically, comes to Rs. 75,601, i.e., Re. 1 in excess of the figure shown in the 5th column of the consolidated Statement. This might have been done to round off the Statement because the figure showing the total money paid on the acreage sprayed upto 16th November 1971 calculated at the rate of 90 paise per acre, as shown in this Statement, is exactly correct.

Next I will take up Pushpaka Aviation (P) Limited. The total money paid on the acreage sprayed upto 16th November 1971 shown in the 7th column of the consolidated Statement, is 1,03,860. The Statement, Ex. CW-2/19, shows that Pushpaka Aviation had upto 16th November 1971 covered on acreage of 1,15,400. The 'commission' payable on this acreage at the rate of 90 paise per acre would exactly come to Rs. 1,03,860 as is shown to have been paid in the Statement, Ex. CW-2/20. This means, according to this Statement, Ex. CW-2/20, by 23rd December 1971, Pushpaka Aviation (P) Limited had, in addition to their share payable on 23rd December 1971, also paid the sum of Rs. 17,603 which according to the statement, Ex. CW-2/19, was payable by that Company on 25th November 1971. The inference is that subsequent to 25th November 1971 and before or at the collective payment on 23rd December 1971, H. P. Rao of Pushpaka Aviation had separately paid to the Minister what was payable by him on 25th November 1971 but was not then paid.

In his statement before the Commission and also in his affidavit as well as his statement recorded under Section 5-A, H. P. Rao has stated that he had subsequently withdrawn from his personal account by cheque a sum of Rs. 11,000 and paid the same to the Minister, Shri Anbil Dharmalingam. In his statement under Section 5-A, he has further stated that before joining in the collective payment on 23rd December 1971, he had paid the remaining amount of Rs. 6,603 which was the balance of the amount payable by his Company on 25th November 1971.

The statement of the bank account of H. P. Rao and his wife, Mrs. Yashodhara P. Rao, prepared by the First National City Bank, shows withdrawals of Rs. 1,500, Rs. 11,250, Rs. 3,000 and Rs. 9,500 against cheque Nos. 312, 314, 315, 284 as on 30th November 1971. Out of these amounts drawn from their personal joint account, Rs. 11,000, according to Rao, were paid to the Minister in the beginning of December 1971, against the short fall of Rs. 17,603 which he could not pay on 25th November 1971.

In the consolidated statement C.W-2/20, this amount of Rs. 17,603 paid by Rao separately and subsequently to 25th November 1971, has been related to column No. 5 "Money paid up to November 1971". In that column against the name of Pushpaka Aviation, the figure 'Rs. 87,930, is shown. Had H. P. Rao not paid subsequently to 25th November 1971, the sum of Rs. 17,603 in instalments, the figure in that column should have been Rs. 70,326. Thus, the inevitable inference is that Rao has subsequently paid what was payable in relation to the second instalment of November 1971. In this way, C.W-2/20 lends complete credence to the testimony of H. P. Rao and conclusively shows that he had paid to the Chief Minister and the Minister on behalf of his Company regarding the contracts of 1971-72, a total amount of Rs. 1,03,860 as shown in the statement Ex. C.W-2/20.

Next Company shown in the consolidated statement is Mahindra and Mahindra Limited, which was at all material times represented by P. G. Dastoor. The total money paid by this Company towards the 'commission', according to the Statement, Ex. C.W. 2/20, for the acreage covered is Rs. 98,286. The statement, Ex. C.W-2/19, shows that upto 16th November 1971, Mahindra and Mahindra had covered an acreage of 1,09,200. Calculated at the rate of 90 Paise, the commission payable on this acreage would be Rs. 98,280 which almost tallies with the figures of money paid shown in Ex. C.W-2/20. Rather, this Company appears to have paid Rs. 6 more than what was payable by them. According to this statement, a sum of Rs. 15,390 was contributed by this Company towards the collective payment made on 23rd December 1971. Statement, Ex. C.W-3/5, also—which was prepared by Krishnan—shows that a sum of Rs. 15,390 was payable by this Company as the instalment due on 23rd December 1971. According to the Master Lists, Exs. C.W-2/16, C.W-2/17, C.W-2/18 and C.W-2/20, Mahindra and Mahindra Limited contributed Rs. 22,500, Rs. 10,404, Rs. 15,390 towards the collective payments made on 22nd September 1971, 11th October 1971, 25th October 1971, 6th November 1971 and 23rd December 1971, respectively. The total of these amounts come to Rs. 66,654. But the amount paid before the payment of 23rd December 1971 in November shown in column 5 in the consolidated statement, C.W-2/20, is Rs. 82,890. This means that after 25th November 1971, P. G. Dastoor or some other representative of Mahindra and Mahindra paid Rs. 16,236 which, according to the Master List C.W-2/19, was payable by that Company as their share of the Commission but was not then paid. It is in evidence that Dastoor was the author of the consolidated Statement, Ex. C.W-2/20. Showing the total amount of payment made by him on behalf of Mahindra and Mahindra Limited up to 23rd December 1971 as Rs. 98,286, amounts to an admission against his own interest by him about the payment of Rs. 16,236, also, separately and subsequently to 25th November 1971.

To sum up, these Master Lists not only confirm the other evidence on record with regard to the collective and individual payments made by the Operators in respect of the acreages covered up to 16th November 1971, but also what was paid after 25th November 1971, separately by H. P. Rao and P. G. Dastoor to the Minister, Shri Anbil Dharmalingam.

Similarly checked with reference to the earlier documents, the remaining figures in the consolidated statement, Ex. C.W-2/20, would be found to be correct with the exception of two errors to be noticed presently.

There is no evidence that Captain also paid on behalf of his Company what was payable by him on 25th November 1971.

The total of acreages sprayed by the Operators, according to the statement, Ex. C.W-2/19, upto 16th November 1971, is 6, 16, 500. These figures appear to be correct when checked with the figures available from the office of the Director of Agriculture. The commission calculated at the rate of 90 paise per acre on this total acreage would be Rs. 5,54, 850. According to Krishnan, Agricultural Aviation did not contribute their share amounting to Rs. 18,270, towards the collective payment on 23rd December 1971 to the Minister. Similarly, as already noticed, Av-India did not pay Rs. 6,535 on 25th November 1971, or ever thereafter. The total of these two unpaid amounts comes to Rs. 24,805. Deducting a sum of Rs. 24,805 from the figure, Rs. 5,54,850, the balance comes to Rs. 5,30,045. After excluding the amount of Rs. 18,450 which in the consolidated statement (Ex. C.W-2/20), is shown to have been paid by one Aircraft Society with which we are not concerned, the balance as the total 'commission' paid by the Operators for the acreages covered up to 16th November 1971, comes to Rs. 5,30,044.

According to the other evidence, oral as well as documentary, the total of the 8 payments, made collectively or individually, to the Chief Minister and Minister, Shri Anbil Dharmalingam, inclusive of the payments of Rs. 17,603 and Rs. 16,236 made by Rao and Dastoor respectively, after 25th November 1971, comes to Rs. 5,30,019. This means that according to the consolidated statement, Ex. C.W-2/20, there will be a difference of Rs. 31. If the full amount of the commission calculated at Rs. 9 per acre had been paid with arithmetic exactitude, the Operators have, in fact, paid Rs. 31 less; or, there is an error. The Affidavit of Khemka shows that the amount paid by Khemka was Rs. 28,408 and not Rs. 28,439 as shown in the consolidated statement

C.W. 2/20 (referred to in Annexure 'A' as the Final List). Further, in this Consolidated Statement, C.W. 2/20, there is a totalling mistake. The total of the money shown in the 7th column is Rs. 5,48,694; whereas it should have been Rs. 5,48,500. If these two errors are eliminated and the sum of Rs. 18,450 shown to have been paid by one Aircraft Society is excluded, the balance comes to Rs. 5,30,019 which exactly tallies with the net result with regard to these payments emerging from the evidence on record.

The actual amount according to the evidence on record paid to the Chief Minister, through Vaithialingam, is Rs. 1,42,273 and to the Minister for Agriculture, Shri Anbil Dharmalingam, Rs. 3,87,746 as per details given below.

<i>Name of the Operator.</i>	<i>Paid to Vaithialingam.</i>	<i>Paid to Dharmalingam.</i>	<i>Total.</i>
(1)	(2)	(3)	(4)
	RS.	RS.	RS.
1. Pushpaka Aviation (H. P. Rao) ..	25,000	78,860	1,03,860
2. Khemka Aviation (C. P. Khemka) ..	10,720	17,688	28,408
3. Cambata Aviation (Cambata)	22,700	52,900	75,600
4. Sanghi Aviation (Suresh Sanghi) ..	450	2,790	3,240
5. Maneckji Aviation (Pat Dimney) ..	18,153	61,857	80,010
6. Agricultural Aviation (Krishnan) ..	24,750	65,520	90,270
7. Av-India (Captain)	18,000	32,345	50,345
8. Mahindra and Mahindra (Dastoor) ..	22,500	75,786	98,286
	1,42,273	3,87,746	5,30,019

Thus read, these documents show that the total of the amounts paid to the Chief Minister and the Minister in respect of the contracts of 1971-72, was Rs. 5,30,019. Checked arithmetically, making due allowance for arithmetical and other inadvertant mistakes, these Master Lists or Statements prepared by Krishnan or other Operators from time to time, the copies of which were generally handed over to the payee along with the amount paid, furnish very cogent corroboration of the oral testimony of the witness with regard to the payments in question.

In his deposition, Shri Rajagopal (C.W-1), has said that he used to meet the household expenses of Shri Anbil Dharmalingam and also his Petrol expenses. He had instructed Messrs. Abdul Cader & Co. to supply petrol on credit from their petrol pump on slips signed by Poyyamozhil, son of Shri Anbil Dharmalingam, and Sundaram and Joseph, Drivers of Shri Anbil Dharmalingam. The petrol dealer sent the bills to him for payment, which were paid by him by cheques on different occasions. He had incurred a total expenditure of approximately, Rs. 10,000 over payment of Anbil's petrol bills. In addition, he had also incurred expenses—roughly about Rs. 10,000 towards Shri Anbil Dharmalingam's household expenses.

Exhibits C.W-1/9 to C.W-1/267, are petrol order slips which bear the signatures of either Poyyamozhi, or Sundaram or Joseph, on Messrs. Abdul Cader & Co. in respect of Shri Anbil Dharmalingam's cars. From these slips and the cheques (Exs. C.W-1/268 to 277), it appears that the following amounts were paid by Shri Rajagopal to Messrs. A. S. M. Abdul Cader and Co. in respect of the supply of petrol to vehicle Nos. TMC 9999, MSM 2332 and TNY 4999 belonging to Shri Anbil Dharmalingam :

								RS. P.
December 1971	..	..	..	..	..	..	....	1,800 23
January 1972	..	..	..	..	..	..	..	2,193 70
February 1972	..	..	..	..	..	..	..	2,130 38
						Total	..	<u>6,124 31</u>

From the account book of V. Rajagopal, Ex. C.W. 1/234, it appears that during the period 6th July 1971 to 22nd March 1972, there are various entries showing expenditure incurred over Shri Anbil Dharmalingam's house-hold expenses. The total amount of these entries comes to Rs. 4,956.55.

In his counter-affidavit, dated 19th September 1976, Shri Anbil Dharmalingam has admitted that Rajagopal sometime used his cars for the purpose of taking advantage of his son moving with him. When this was put to Shri Rajagopal, he denied this allegation as wholly false. In Rajagopal's words :

"I knew him only as Anbil's son. Rather, I disapproved of his profligate ways and to have the same corrected, I brought it to the notice of Anbil that his son was taking to extravagance and was drawing unduly excessive petrol from the dealer at my cost..... I never moved about with Anbil's son."

It is significant to note that all the entries in Rajagopal's account book relating to house hold expenses of Shri Anbil Dharmalingam and all the petrol bills of Messrs Adbul Cader and Co., relate to the period (1971-72) during which Shri Anbil Dharmalingam was a Minister.

In his statement before the 5-A Investigation Officer, Rajagopal has explained why he incurred these items of expenditure, in the following words :—

"I was incurring all these expenditure because I felt confident that with his help, I could earn a commission from aircraft Operators and supply of chemicals to Government many times over the amount spent by me on him."

There is no reason to disbelieve Rajagopal's statement especially when it has been materially corroborated by unimpeachable documentary evidence. I would therefore hold that *prima facie* the receipt of pecuniary benefits, at least to the tune of Rs. 11,080.86, during 1971-72, by Shri Anbil Dharmalingam from Rajagopal has been established. This conduct of Anbil Dharmalingam, while as Minister, is connected with his misconduct in receiving or agreeing to accept commission from the Operators through V. Rajagopal and the firms floated by him for this purpose, in respect of the aerial spraying contracts and purchase of pesticides.

Before I part with this discussion, I think it necessary to comment on the unusual conduct of the respondents, who were then Ministers of the Government of Tamil Nadu, in not allowing the C.B.I. Officers who were investigating the criminal case, to have access to the official records or to take them over. This aspect of the case, if established, will strengthen the inference of guilt in respect of the charges of corruption levelled against the respondents, S/Shri Karunanidhi and Anbil Dharmalingam.

It is in evidence (*vide* affidavits of Shri V.V. Badami and Shri A.K. Suryanarayanan) that on 23rd October 1972, there were simultaneous raids conducted by the Income-tax Authorities on the offices of these aircraft Companies at Bombay, and also at the place of V. Rajagopal and all the records of these Companies and V. Rajagopal relating to aerial spraying contracts or this 'commission' business were seized. After scrutinizing these records, Shri V.V. Badami, Director, Directorate of Inspection (Investigation) (Income tax Department), wrote a letter, dated 4th April 1973, to the Director of C.B.I. reporting that from the documents seized from the Operators, he had reason to believe the commission of offences under sections 120B, 161, 162, 163, 165 and 165A, I.P.C. and section 5(2) read with section 5(1)(d) of the Prevention of Corruption Act, by Shri Hari Bhaskar and others relating to the award of aerial spraying contracts in Tamil Nadu. On the basis of this letter, the Central Bureau of Investigation (S.P.E.) New Delhi, registered a case on 5th April 1973 against Shri Hari Bhaskar and others in respect of the aforesaid offences. The investigation was entrusted to Shri R.P. Kapur, D.S.P. (C.B.I.) (assisted by Shri Thiagarajan, D.S.P., C.B.I.). Shri Kapur has filed a detailed affidavit before this Commission in response to the direction issued to him.

In his affidavit, R.P. Kapur has stated that for the purpose of investigation of the criminal case, immediate steps were taken by the D.I.G., Shri Radhakrishnan Nair, who wrote a D.O. letter to Shri Sabhanayagam, Chief Secretary, Tamil Nadu on 23rd April 1973, requesting to arrange for the handing over of all the relevant records to the Investigating Officer. Shri Hingorani, Joint Director and I.G./S.P.E., also personally met the Chief Secretary on 23rd April 1973, for the purpose. The Chief Secretary informed these officers that the records could not be made available without the orders of the Ministers.

On 11th May 1973, Shri Hingorani, Joint Director, C.B.I. was verbally informed by the Chief Secretary that a decision had been taken to allow perusal of the records by the C.B.I., consequently, on 19th June 1973, the deponent (R.P. Kapur) contacted the Secretary, Agriculture, but was not

allowed access to the records. In his letter, dated June 20, 1973, the Secretary Agriculture, Tamil Nadu, informed the D.I.G., C.B.I., that the matter was still under consideration of the Government. The Director of C.B.I., also wrote a D.O. letter on 26th June 1973 to the Chief Secretary requesting him to arrange an early supply of the documents to the Investigating Officer. He however, received, in reply, a D.O. letter, dated 4th July 1973, from Shri H.K. Ghazi, Special Secretary to the Government of Tamil Nadu, that the files required by the C.B.I. would be made available to the Investigating Officer for inspection in the chamber of the Chief Secretary to the Government of Tamil Nadu after July 20, 1973. He however, mentioned that the C.B.I. could specifically ask for any document by making a request to that effect in writing, and such a request would be considered by the Government. But inspite of the best efforts made by the Investigating Officer and further correspondence regarding this matter between the Senior Officers of the C.B.I. and the officials of the State Government, no official records were made available, even for inspection, to the Investigating Officer till 19th July 1973. On this date, also only *some incomplete* records were allowed to be scrutinised by the Investigating Officer in the office room of Vaithialingam, Deputy Secretary (Public). The essential connected records were not made available. The D.I.G., C.B.I., by another D.O. letter, dated August 20, 1973, requested that the file scrutinized by the Investigating Officer be handed over to him, and that further files indicated in the annexure to that letter, be also handed over for the purpose of the investigation. A good deal of correspondence further passed between the D.I.G., C.B.I., and the officers of the Tamil Nadu Government. In November 1973, Shri Lakshminarayanan, the then D.I.G. (C.B.I.), Madras, was informed that the Law Minister was not willing to hand over the files. Shri Sundaram, Deputy Secretary, wrote a D.O. letter, dated 5th December 1973, indicating the stand of the Tamil Nadu Government, that the C.B.I. had no jurisdiction to investigate the case against an I.A.S. Officer of the Tamil Nadu Government, and that consequently, the records could not be handed over to them. However, he added that the files could be inspected by the Investigating Officer. But when D.S.P. Thyagarajan contacted Mr. Sundaram on 7th December 1973, he was not allowed inspection of the files.

The stand taken by Tamil Nadu Government was communicated by Shri K.K. Shah, the then Governor of Tamil Nadu in his letter No. S/24-1/74, dated 16th July 1974 to Shri Ram Niwas Mirdha, Minister of State, Ministry of Home Affairs, Government of India, New Delhi, thus:

"The Central Bureau of Investigation has called upon the Government of Tamil Nadu to hand over certain files needed for the investigation of a complaint in respect of tenders for aerial spraying negotiated by Thiru Hari Bhaskar, Director of Agriculture.

* * * * *

The Government of Tamil Nadu feels—and I think rightly—that since Thiru Hari Bhaskar was an employee of State Government at the time in Question (if the Central Bureau of Investigation has got evidence of his being involved in the crime), the prosecution should be handed over to the Government of Tamil Nadu and they should not be called upon to hand over the files to the Central Bureau of Investigation. They are prepared, however, to allow the Central Bureau of Investigation to inspect the files and to take notes and will be prepared to produce the files whenever needed. May I request you to please look into it and see how the legitimate desire of the Government of Tamil Nadu can be accommodated."

In reply, on September 19, 1974 Shri R.N. Mirdha wrote :

"I have talked to Director, C.B.I. about this matter. It seems that the C.B.I. has been handicapped in the investigation of this case because of the non-availability of the files, for which a request had been made to the Government of Tamil Nadu and will continue to be handicapped, to some extent, if the files are not made over to them. Moreover, since the State Government feel strongly in the matter, we agree to the arrangement suggested "in your D.O. that the officers of the C.B.I. may be allowed to inspect the files and make such notes or take such copies from them as may be required by it for its investigation. I trust that the C.B.I. will be afforded the necessary facilities for this purpose. *I hope that later, if it becomes necessary, the State Government will consider the C.B.I.'s request to produce the files when required.*"

(underlining mine.)

Thereafter on November 8, 1974, the Superintendent of Police, C.B.I., wrote to Shri Sundaram, Deputy Secretary to the Government of Tamil Nadu, saying that he would be grateful if the Deputy Secretary could intimate when inspection of the documents would be permitted by the State Government to the Officers of the C.B.I., as promised. Then, there is a letter, dated 6th February 1975, from the Assistant Secretary, the Government of Tamil Nadu, to the Public (SC) Department, Madras, *inter alia*, informing that action was being taken to reconstruct the two Government records, which would thereafter be sent as quickly as possible. By his letter, dated 19th April 1975, the Investigating Officer, requested the Deputy Secretary (Public) to make available for inspection, the two files mentioned therein.

There is another D.O. letter, dated 19th August 1975, from the Public (SC) Department saying that action was being taken to secure the two files mentioned therein in order to make them available for perusal by the C.B.I. Officers.

There is still another D.O. letter, dated 27/28th November 1975, from the Director of the C.B.I., to the Chief Secretary, Government of Tamil Nadu, requesting that the official records relating to aerial spraying contracts of 1970-71, and 1971-72 be made available for inspection.

From the correspondence mentioned above, read in the light of what has been stated by Shri R.P. Kapur, in his affidavit, it is clear that despite the assurance held out by the Government of Tamil Nadu to the Minister of State, in the Government of India, all the relevant official files required for investigation were not made available, even for inspection, to the Investigating Officer. As deposed to by Shri Kapur, it was only after the imposition of the President's Rule in Tamil Nadu that most of the Government files were made available to him for inspection in February, 1976, or thereafter, Shri Kapur has added that an important official file bearing No. C. 3/257233/71 which, according to the Investigating Officer, contains important, incriminating documents, has not been handed over to him, on the ground that it was sent to Shri Madhavan, former Law Minister of Tamil Nadu, and was never returned by him.

It would be relevant in this context to quote a tell-tale paragraph extracted from the note of Shri Sundaram, in the relevant file of the State Government which reads as follows:—

“It was communicated by the Minister of Industries that the former Agriculture Director, Mr. Hari Bhaskar may be requested to come over here and discuss the case before a final decision is taken about handing over of the records to the C.B.I.”

It was certainly most extraordinary on the part of the then Minister for Industries and Law, Shri Madhavan to have suggested that the accused Officer, Hari Bhaskar be asked to come over for a discussion before handing over the file to the investigating agency.

In his counter-affidavit, dated 19th September 1976, Shri Karunanidhi has admitted that they had refused to hand over the relevant official files to the Officers of the CBI who were investigating the criminal case, for the reason that the CBI had no jurisdiction to investigate the charge against an I.A.S. Officer serving the State of Tamil Nadu. The Respondent and his colleagues wanted the CBI to hand over all the material collected by them against Hari Bhaskar, on the further ground that they would, if necessary, themselves prosecute him. Shri Karunanidhi has further admitted that this stand of theirs was supported by the then Governor of Tamil Nadu in the D.O. letter written by him to the Minister of State, Ministry of Home Affairs, Government of India. He however, maintains that ultimately, the State Government allowed the CBI to inspect the relevant records.

Thus, it stands very cogently established that the Ministers of the State Government, including the respondents, Shri Karunanidhi and Shri Dharmalingam did not deliberately allow the CBI Officer who was investigating the criminal case, to collect all the relevant evidence from the official records. Their stand that the CBI had no jurisdiction to investigate the case, was only a lame excuse. Shri Kapur has stated in his affidavit, that no such objection was raised by the then Government of Tamil Nadu to the investigation of similar offences by the CBI against certain Medical Officers serving the State of Tamil Nadu, who were, after investigation, charge-sheeted in Court. In this connection it may be noted that by Notification No. 25/12/62-AVD-II, dated 18th February 1963, published in the Gazette of India, Part II—Section 3(i) February 23, 1963, page 283, G.S.R. 306, the Government of India in exercise of its powers under sub-section (1) of section 5 of the Delhi Special Police Establishment Act, 1946 (XXV of 1946) extended the powers and jurisdiction of members of Delhi Special Police Establishment *inter alia* to the State of Madras for the investigation of offences specified in the Schedule annexed thereto, which, among others, include offences punishable under Sections 161, 162, 163, 164, 165, 165-A, I.P.C. offences under the Prevention of Corruption Act, 1947 and attempts, abetments and conspiracies in relation to or in connection with the aforesaid offences.

Legal position apart, for every acre sprayed by the Operators in Tamil Nadu during the years in question, the Central Government was out of its own funds, giving a subsidy of Rs. 7. Huge funds contributed by the Central Government were involved. There was therefore, no good ground for not allowing the CBI to scrutinize or take over official records for investigation.

The then Ministers of Tamil Nadu in not allowing the CBI to properly investigate this case were, therefore, not acting in good faith. It is not difficult to see the motive behind their attempt to delay and obstruct a full and proper investigation of the case. It was not correct to say that the charge under investigation was only against an I.A.S. Officer, Hari Bhaskar. The Chief Minister and the Minister could not be labouring under any doubt that their conduct, also would

come in for question during the investigation. From a bare perusal of the F.I.R., it was apparent that one of the charges under investigation was in respect of the offence of criminal conspiracy, section 120-B, I.P.C. The respondents therefore must have been apprehending that a full and unfettered scrutiny of the official records might unravel the truth, leading to their involvement. In reality, that was why they tried to stall and thwart a proper investigation of the case. The State Government did not appear to be sincere when they asked for the material collected by the Investigating Officer from other sources, on the ground that they would prosecute Hari Bhaskar, themselves. They never took even departmental action against Hari Bhaskar. Not even his explanation was ever called for by them. Had the Government of India readily and straightaway acceded to that demand of the then Tamil Nadu Government for handing over the investigation of the case and all the evidence collected by the Investigating Officer from other sources, there was every apprehension of the truth being smothered, burked and buried for ever. Credit for preventing the happening of a such a thing, goes, in no small measure, to the Investigating Officer, Shri R. P. Kapur, who never let up his efforts to collect evidence relating to this matter from all possible sources, with a dogged determination and deep devotion to duty, despite heavy odds and obstructions placed in his way by the then Government of Tamil Nadu. Indeed, it was the wealth of evidential material already collected by Shri Kapur, that facilitated the task of the investigating agency assisting the Commission in completing their investigation and report under Section 5A on so vast and intricate a matter within the proportionately short period granted to them for this purpose.

Considered against the above background, the dillydallying refusal of the respondents, Sarva Shri Karunanidhi and Dharmalingam to hand over certain documents wanted by the C.B.I., besides itself being an abuse of their official position, is a relevant circumstance even under Section 8, Evidence Act, showing the motive behind their attempt to stifle and frustrate the investigation of this case. This tell-tale circumstance lends general but strong assurance, albeit indirectly, to the direct evidence of the witnesses regarding the payments of illegal gratification made to Shri Karunanidhi and Shri Anbil Dharmalingam.

In the light of the above discussion, I have no hesitation in holding that the following charges have been clearly established by cogent, convincing and reliable evidence, oral, documentary and circumstantial.

A. Regarding aerial spraying contracts of 1970-71.

I. Against Shri Anbil Dharmalingam.—(i) That Shri Anbil Dharmalingam acting in concert with and through V. Rajagopal, entered into an agreement with the Operators whereby he agreed to receive gratification in the shape of commission, as a motive or reward, for securing for the Operators who were Members of the Indian Agricultural Aviation Association, Bombay, by inducing with the exercise of his personal influence, the Chief Minister, Shri M. Karunanidhi of the Government of Tamil Nadu, and the Director of Agriculture, Tamil Nadu, Shri Hari Bhaskar, contracts for the aerial spraying of crops from helicopter during 1970-71, in Tamil Nadu, at the rate of Rs. 9 per acre;

(ii) That in pursuance of the aforesaid arrangement, a firm, in the name of Ponnee Agencies, was floated in which Mrs. N. D. Mahalakshmi, a 'dummy' partner was inducted, only to cover and conceal the share which Shri Anbil Dharmalingam was to receive equally with Rajagopal of 66 per cent of the commission collected from the Operators ;

(iii) That in pursuance of the aforesaid arrangement, Shri Anbil Dharmalingam, actually received Rs. 20,000 in cash on 1st July 1970, towards his share of the "commission", through V. Rajagopal collected from the Operators;

II. Against Shri Karunanidhi, the then Chief Minister.—(i) That on November 17, 1970, Shri Karunanidhi abusing his official position, as the Chief Minister of the State of Tamil Nadu, accepted, through his Private Secretary, Vaithialingam, a sum of Rs. 25,000 as illegal gratification, from H. P. Rao, Managing Director of Pushpaka Aviation (Private) Limited, Bombay, as a motive or reward for awarding to the said Company aerial spraying contract during the year 1970-71 in respect of an acreage of 1.5 lakhs at the rate of Rs. 9 per acre, a rate which was in excess of what that Company itself had originally quoted ;

(ii) That in awarding the aerial spraying contracts of 1970-71 at the rate of Rs. 9 per acre to the Operators who were members of the Indian Agricultural Aviation Association, Bombay, Shri Karunanidhi, being influenced by extraneous considerations, abusing his official position as Chief Minister, and acting in utter disregard of the norms of propriety, fair practice and good administration, designedly stalled and foiled the rightful move of Shrimathi Sathyavani Muthu, the then Agriculture Minister, to fix the rate at Rs. 8.25 per acre, through negotiations with the Operators;

(iii) That in awarding the aforesaid contract in 1970-71, to Pushpaka Aviation, at the rate of Rs. 9 per acre, as against their original quotation of Rs. 8 per acre, Shri M. Karunanidhi, the then Chief Minister, actuated by the said corrupt motive of pecuniary gain to himself, improperly and designedly brushed aside the proposal of the Secretary for Agriculture, for making an attempt to persuade Pushpaka Aviation (Private) Limited, in the first instance, to agree to do the spraying work at their original quotation of Rs. 8 per acre.

B. Regarding the contracts of 1971-72.

I. Against Shri M. Karunanidhi, the then Chief Minister.—(i) That on 13th August 1971 Shri M. Karunanidhi, abusing his position as Chief Minister of Tamil Nadu, received through his Private Secretary, Vaithialingam, an illegal, cash gratification of Rs. 25,000, in the shape of advance commission from H. P. Rao, Managing Director of Pushpaka Aviation (P) Ltd., Bombay, as a motive or reward for doing acts in connection with his official functions, such as prompt clearance of the bills of that Company for payment, the delivery of signed contract-deed to them and the allocation of more acreage to that Company for spraying, etc.;

(ii) That on 18th September 1971, Shri Karunanidhi abusing his official position as Chief Minister, peremptorily demanded, through his Private Secretary, Vaithialingam, from the Operators, payment of illegal gratification, in the shape of commission at 90 paise per acre, immediately in advance, without any vouchers, off-the-record, as a condition or motive for allowing payment of their pending bills, and for allocating them further work, and eventually forced the Operators to agree to pay commission at 90 paise per acre in advance, in two instalments at 45 paise per acre, in respect of the acreages covered up to 19th September 1971 ;

(iii) That on 22nd September 1971, in pursuance of the aforesaid demand, and imposed arrangement, Shri Karunanidhi abusing his official position as Chief Minister, received through his Private Secretary, Vaithialingam, a total sum of Rs. 1,17,273 from the seven Operators including Cambata, Captain, Krishnan and others, as a motive or reward for doing acts connected with his official functions, such as releasing payment of their pending bills in respect of the work done upto 19th September 1971 and for allocating further work at the contractual rate of Rs. 11 per acre, etc.

II. Against Shri Anbil Dharmalingam.—(i) That Shri Anbil Dharmalingam, abusing his official position as the Minister for Agriculture, acting in concert with V. Rajagopal, and initially negotiating through V. Rajagopal and later after direct talks with the Operators, on July 2, 1971, finalised an arrangement whereby he agreed to award to the Operators aerial spraying contracts in 1971-72, at the rate of Rs. 11 per acre in consideration of their paying 'commission' at the rate of 80 paise per acre to and through the firm, Ponnée Enterprises, managed by V. Rajagopal.

III. Against Shri Karunanidhi and Shri Anbil Dharmalingam.—(i) That in 1971, Shri Karunanidhi and Shri Anbil Dharmalingam abusing their official positions as the Chief Minister and the Minister for Agriculture, Tamil Nadu, respectively, conceived in concert a plan to bring down the Aviation Operators to their heels and make them submit to their extortionate demands for gratification in the shape of commission, and in implementation, of that plan issued verbal instructions to the Government officials, particularly, Vaithialingam, Vedanarayanan and Hari Bhaskar, and through them took the following steps :—

(a) The contract deeds, in duplicate, signed by the Operators were obtained from them by the Director of Agriculture with the representation that one copy of the same would be returned to them in due course after being signed and completed on behalf of the Government, but with the solitary exception of Pushpaka Aviation whose Managing Director had, with less resistance and little delay, complied with the peremptory demand of the Chief Minister to pay him the gratification, such copies of the signed contract-deeds were never returned to the Operators, despite repeated requests made by them ;

(b) By giving the Operators to understand that for 1971-72 they had been awarded the contracts at Rs. 11 per acre, they (Operators) were induced to undertake large-scale aerial spraying operations and incur heavy expenditure in compliance with work allocation orders in which the rate at which they were to be paid for the spraying, was deliberately not specified ;

(c) The Secretary and the Director of Agriculture were directed with a view to ensure regular payment of the commission by the Operators, that payments in respect of the arrears of the preceding year (1970-71) as well as for the work done during 1971-72 in anticipation of signing of the formal contract, could be settled and the signed contracts handed over only to those Operators who had paid the commission as demanded by the Ministers.

(d) In order to ensure better control over the settlement of the bills of the Operators, settling of their bills which had been delegated to the District Agriculture Officers, was designedly centralised and they were asked to send all the bills to the Office of the Director of Agriculture for "Scrutiny"—the only scrutiny exercised at the Directorate being whether the "commission" had been paid or not, as stipulated by the Ministers;

(e) Such orders releasing payments or for clearance of the bills were issued by the Director of Agriculture, only when the concerned Operator/Operators had paid the commission in respect of a particular area covered during a period by the spraying operations, in advance, without vouchers, and the fact of such payment was communicated to the Director by the Chief Minister/the Minister, directly or through Vaithialingam or Vedanarayanan;

(f) The non-return of the signed contract-deeds, was designed to serve a double purpose (i) to emasculate the Operators from enforcing payment of their bills or seeking redress through Court; (ii) to keep the Operators under constant threat and fear that the Government might by signing these contracts, at any time, impose a penalty at the rate of Rs. 5 per acre on the allocated acreage, on the slightest excuse of a default on the part of the Operators in the performance of the contract.

(ii) That in causing the issue of work allocation orders and the commencement of spraying work by the Operators, before the execution and completion of the formal contract-deeds, Shri Karunanidhi, the then Chief Minister and Shri Anbil Dharmalingam acted with grave irregularity and impropriety in wilful contravention of Article 166 of the Madras Financial Code and Article 299 of the Constitution.

(iii) That in July 1971, Shri Karunanidhi and Shri Anbil Dharmalingam, abusing their official positions as Chief Minister and the Minister for Agriculture, respectively acting in accordance with a pre-arranged plan conceived in concert by them, and in disregard of the norms of propriety, fairness and the rules, and actuated by corrupt motives, induced under pressure, Vedanarayanan, Secretary for Agriculture, against the latter's better judgment, to put up a proposal (which was eventually approved by them) for rejecting on some excuse the tender of H. S. Shoba Singh (P) Limited for the year 1971-72, even though it was the lowest, i.e. Rs. 9.50 per acre, and for accepting the quotation of Rs. 11 per acre from the other Operator-members of the Association, even though the same was in excess of the ceiling rate of Rs. 10 per acre fixed by the Government of India.

(iv) That Shri Dharmalingam, the then Minister for Agriculture, Tamil Nadu, acting in pursuance of a pre-arranged plan conceived in concert with Shri Karunanidhi, Chief Minister, abusing his official position as Minister, and actuated by corrupt motives, first, on 19th July 1971, and again on 21st July 1971, demanded from the Operators, who met him on these dates, illegal gratification in the shape of commission at the rate Re. 1 or at least, 90 paise per acre, to be paid through an agent other than V. Rajagopal, or the Ponnee Enterprises.

(v) That Shri Anbil Dharmalingam, acting in pursuance of a pre-arranged plan conceived by him in concert with Shri Karunanidhi, the then Chief Minister, and by abusing his official position as Minister for Agriculture, directly received from the Operators illegal gratifications in amounts and on dates noted below, as a motive or reward for doing acts connected with his official functions.

- (a) Rs. 1,41,650 in cash on 11th October 1971.
- (b) Rs. 41,714 in cash on 25th October 1971.
- (c) Rs. 52,676 in cash on 6th November 1971.
- (d) Rs. 53,359 in cash on 25th November 1971.
- (e) Rs. 64,502 in cash on 23rd December 1971.
- (f) Rs. 17,603 from H.P. Rao after 25th November 1971.
- (g) Rs. 16,242 from P.G. Dastoor after 25th November 1971.

Total .. Rs. 3,87,746

(vi) That Shri Karunanidhi, being the Chief Minister and Shri Anbil Dharmalingam, the Agriculture Minister of Tamil Nadu, during the period from April 1973 to 3rd February 1976, abusing their official positions in the State Government, and actuated by ulterior motives, attempted to stall, thwart and frustrate the investigation under the Code of Criminal Procedure, 1898, of the criminal case, R.C. No. 2/73, registered on 5th April 1973 under sections 120-B, 161, 162,

163, 165 & 165-A, I.P.C. and section 5(2) read with section 5(1)(d) of the Prevention of Corruption Act, 1947, by refusing to allow the Investigating Officers of the Central Bureau of Investigation to scrutinise fully and freely official records in the custody of the Government and its Department, relating to the award of the aerial spraying contracts of 1970-71, 1971-72, nor allowed the said investigating officers to take over any documents, whatever, from such records, despite the assurance given on their behalf by the then Governor of Tamil Nadu in his letter, dated July 16, 1974, addressed to the Minister of State, Ministry of Home Affairs, Government of India, New Delhi.

IV *Against Shri Anbil Dharmalingam.*—It has been *prima facie* established, that during 1971-72, while as Minister for Agriculture, Tamil Nadu, Shri Anbil Dharmalingam, received pecuniary benefits from V. Rajagopal in the shape of payment by the latter towards the petrol consumed in the cars used by Shri Anbil Dharmalingam or his son, Poyyamozhi, and also towards other house-hold expenses of Shri Anbil Dharmalingam, exceeding Rs. 11,080, in the aggregate, and Shri Dharmalingam never reimbursed V. Rajagopal with regard to those expenses. These acts of Shri Anbil Dharmalingam were connected with his misconduct in receiving or agreeing to receive gratification in the shape of 'commission' from the Operators in respect of the aerial spraying contracts in question through V. Rajagopal and the firms floated by him. This misconduct of Shri Anbil Dharmalingam was also against the Code of Conduct for Ministers laid down by the D.M.K. Government, themselves.

ANNEXURE 'A'.

DETAILS OF PAYMENTS MADE TO THE MINISTERS BY THE OPERATORS OF THE AVIATION COMPANIES IN RESPECT OF AERIAL SPRAYING CONTRACTS FOR 1971-72.

<i>Name of the Aviation Company.</i> (1)	<i>Period for which commission was paid.</i> (2)	<i>Acreage sprayed.</i> (3)	<i>Amount of commission Rs.</i> (4)	<i>Oral evidence direct.</i> (5)	<i>Oral evidence corroborative.</i> (6)	<i>Documentary evidence.</i> (7)
13—8—1971—PAID BY SHRI H. P. RAO TO SHRI KARUNANIDHI THROUGH SHRI VAITHIALINGAM — TOTAL AMOUNT PAID RUPEES 25,000.:						
Pushpaka Aviation Co.	(Relates to payment of bills of 1970-71 and advance commission for 1971-72.)	..	25,000	CW-5 H.P. Rao, Page 5 and CW-6, Vaithialingam, Page 19.	C.W-9 Hari Bhaskar, Page 22 and CW-7, Vedanarayanan, Page 19.	(i) Cheque No. 45570 (Ex. CW 5/6), dated 13th August 1971 on Indian Overseas Bank, Madras. (ii) Entries at pages 265-266 of Journal (Ex-11/4-MM/1 and 2) showing Rs. 25,000 in Suspense Account of Shri H. P. Rao. (iii) Journal Voucher 67 [Ex-CW-11/4-MM (A)], indicating withdrawal of Rs. 22,000. (iv) Journal Voucher No. 78 (Ex.C.W-11/4-MM (B), indicating expenses by Shri H.P. Rao and Rs. 25,000 in Suspense Account. (v) Entry at Page 200 of Ledger pertaining to Suspense Account [Ex. CW.11/4-JJ (2).]
22—9—1971—HANDED OVER BY SHRI CAMBATA IN A BRIEF CASE TO SHRI VAITHIALINGAM FOR BEING PASSED ON TO SHRI KARUNANIDHI—TOTAL AMOUNT PAID: RUPEES 1,17,273.						
Agricultural Aviation	— 6—8—71 to 19—9—71 at 45 paise-first instalment.	55,000	24,750	CW-8, Cambata, Page 13, CW-2, Captain, Page 20, CW-6 Vaithialingam Page 20.	CW-9 Hari Bhaskar, Page 31, CW-7 Vedanarayanan, Pages 25-26, CW-5 H. P. Rao, CW-3 Krishnan, CW-4 S.A. Ramachandran, Affidavit of J. K. Maneckji (128) Paragraphs 29-31, Affidavit of S. K. Sanghi (125) Paragraph 50, Affidavit	(i) Page 350 of Statement of Accounts produced by K. N. A. Krishnan (Ex. CW-3/1) showing receipt of Rs. 25,000 through telegraphic transfer from Bombay on 22nd September 1971. (ii) Entry at Page 136 of the Cash Book (Ex. CW-3/1-A).

										of James Fredrick (AW-18) Paragraph 15, Affidavit of Khemka (15) Paragraphs 42 to 46 Affidavit of J. R. Modi (172) Paragraphs 28, 29, 44-49, CW-I Rajagopal, Pages 50-53.		
Avindia	..	..	..	Do.	..	40,000	18,000	Do.	..	Do.	..	(i) Cash Book entry at Page 47-Ex. CW. 11/4-00 (1) indicating receipt of Rs. 8,000 by Captain towards commission account for Tamil Nadu.
												(ii) Cash Book entry at Page 50 - EX. CW 11/4-00-(2) indicating further receipt of Rs. 14,400 towards Commission account.
												(iii) Corresponding entry at Page 209 of Ledger (Ex.11/4-PP) showing expenditure of Rs. 22,400 over "Commission-Tamil Nadu".
Cambata Aviation	..	..	..	Do.	..	50,307	22,700	Do.	..	Do.	..	(i) Entry at Page 90 of the Cash Book showing debit of Rs. 11,319.25 towards promotional expenses on 15th September 1971 (Ex.CW.8/30-CC).
												(ii) Two Vouchers dated 15th September 1971 (Ex.CW-8/30-A, and CW. 8/30-B for Rs. 7,965 and Rs. 3,354.25 respectively.)
												(iii) Entry at Page 69 of the Cash Book showing debit of Rs. 17,500 for Madras operational expenses (Ex. CW.8/30-DD).
												(iv) Cash Voucher, dated 22nd September 1971 (Ex. CW.8/30-C) showing expenses of Rs. 17,500 for Madras operational expenses.
												(v) Entries in Ledger at Pages 152 and 163 showing expenditure of Rs. 11,000 for operational expenses and Rs. 6,500 paid to James Fredrick for operational expenses [(Ex.CW-8/30(A).]

Name of the Aviation Company.	Period for which commission was paid.	Acreage sprayed.	Amount of commission.	Oral evidence direct.	Oral evidence corroborative.	Documentary evidence.
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Mahindra and Mahindra Aviation.	6—8—71 to 19—9—71 .. at 45 paise first instalment.	50,000	22,500 RS.	CW-8, Cambata, Page 33, CW-2, Captain, Page 20, CW-6 Vaithia-lingam Page 20.	CW-9 Hari Bhaskar, Page 31, CW-7 Vedanarayanan Pages 25-26, CW-5 H. P. Rao, CW-3 Krishnan, CW-4 S. A. Ramachandran, Affidavit of J. K. Maneckji (128) Paragraphs 29-31, Affidavit of S. K. Sanghi (125) Paragraph 50, Affidavit of James Fredrick (AW—18) Paragraph 15, Affidavit of Chennappa (15) Paragraphs 42 to 46 Affidavit of J. R. Modi (172) Paragraphs 28, 29, 44—49, CW—1 Raja gopal Pages 50—53.	....
Maneckji Aviation	Do.	..	40,340 18,153	Do.	Do.	(i) Entry at Page 139 of Cash Book indicating advance payment of Rs. 20,000 to Pat Dimney on 15th September 1971 (Marked M.A./1 for identification). (ii) Corresponding entry at Page 127 of the Ledger (Marked M.A./2). (iii) Receipt of Rs. 20,000 indicated in the Statement of Account of Pat Dimney for the period 23rd September 1971 to 30th September 1971 (Marked M.A./3).
Pushpaka Aviation	Do.	..	55,000 (Already paid Rs. 25,000 on 13th August 1971.)	Do.	Do.	Letters of S. A. Ramachandran (Exhibits CW/4/16 and CW. 4/17).
Khemka Aviation	Do.	..	23,823 10,720	Do.	Do.	Master List (Ex. CW 2/16).
Sanghi Aviation ..	Do.	..	1,000 450	Do.	Do.	....
11—10—1971—HANDED OVER BY SHRI CAMBATA IN A BRIEF CASE TO SHRI ANBIL DHARMALINGAM — TOTAL AMOUNT PAID RUPEES 1,41,650.						
Agricultural Aviation ..	6—8—71 to 19—9—71 at 45 paise second instalment.	55,000	24,750	CW-8 Cambata, Page 37, CW-2 Captain, Page 21 CW-5 H.P. Rao, Page 5, CW-3 K. N.A. Krishnan, Page 13 Sanghi's affidavit, Paragraph 51	CW-9 Hari Bhaskar, Page 33, CW-7 Vedanarayanan, page 27, K. J. Maneckji's affidavit, Paragraphs 50 to 59. CW-1 V. Rajagopal (Pages	(i) Entry at Page 286 of the Statement of Accounts produced by Krishnan (CW/3/1) cheque received for Rs. 45,000 by telegraphic transfer from Bombay on 11th October 1971.

(1)

Khemka's affidavit, Paragraph 44, Pat Dimney's affidavit, Paragraph 24, James Fredrick's affidavit, Paragraph 16.

50-53), CW-6, Vaithalingam, Page 21.

(ii) Corresponding entry at Page 162 of the C.

Avindia	-	..	-	Do.	..	40,000	18,000	Do.	..	Do.	..	(i) Entry, dated 9th October 1971 at Page 58 of the Cash Book—Ex.CW.11/1-00(4) showing receipt of Rs. 22,400 by Captain for payment of commission in Tamil Nadu by withdrawal from Baok on that very day.
									..		..	(ii) Corresponding entry at Page 209 of the Ledger (Ex.CW.11/4-PP) showing debit of Rs. 22,400 against Commission Account.
Cambata Aviation	..	..		Do.	..	50,307	22,577	Do.	..	Do.	..	Voucher No. 47, dated 8th October 1971 (Ex. C.W. 8/30-D) showing withdrawal of Rs. 27,830 for payment to James Fredrick as promotional expenses.
Mahiodra and Mahiodra Aviation	..	..		Do.	..	50,000	22,500	Do.	..	Do.	..	Entry at Page 536 of the Connemara Hotel Register (Ex. CW.11/4-15, 16 and 17/ showing the stay of Shri Dastoor on 11th October 1971 at Connemara Hotel.
Maneckji Aviation	..			Do.	..	40,340	18,153	Do.	..	Do.	..	(i) Voucher No. 1271 showing remittance of Rs. 6,345 by Maneckji to Pat Dimney through Khaona on 30th September 1971 (M.A./4).
												(ii) Entries at Pages 127 of the Ledger and 157 of the Cash Book (M.A./5).
												(iii) Entry at Page 120 of the Ledger showing receipt of Rs. 15,185 by Pat Dimney through Captain Ghosh (M.A./6).
												(iv) Further receipt of Rs. 10,000 by Pat Dimney through Captain Ghosh as shown in his statement of Accounts for the period 1st October 1971 to 5th October 1971 (M.A./7).

<i>Name of the Aviation Company.</i>	<i>Period for which commission was paid.</i>	<i>Acreage sprayed.</i>	<i>Amount of commission.</i>	<i>Oral evidence direct.</i>	<i>Oral evidence corroborative.</i>	<i>Documentary evidence.</i>
(1)	(2)	(3)	(4)	(5)	(6)	(7)
			RS.			
Pushpaka Aviation	6—8—71 to 19—9—71 at 45 paise second instalment.	55,000	24,500	CW-8 Cambata, Page 37, CW-2 Captain, Page 21, CW-5 H.P. Rao, Page 5, CW-3 K. N. A. Krishnan, Page 13 Sanghi's affidavit, Paragraph 51, Khemka's affidavit, Paragraph 44, Pat Dimney's affidavit, Paragraph 24, James Fredrick's affidavit, Paragraph 16.	CW-9 Hari Bhaskar, Page 33, CW-7 Vedanarayanan, Page 27, K. J. Manakji's affidavit, Paragraphs 50 to 59. CW-1 V. Rajagopal (Pages 50-53), CW-6 Vaithialingam, Page 21.	(i) Withdrawal of Rs. 50,000 on 9th October 1971 and 11th October 1971 from Syndicate Bank, Madras. (ii) Journal Voucher 39 and 40 entered at Pages 334 and 335 of the Journal (Ex. 11/4-L). (iii) Journal Voucher 51 entered at Page 337 of the Journal indicating expenditure of Rs. 57,443.28, including Rs. 24,500 shown in Suspense Account (Ex. CW. 11/4-LL/5). (iv) Entry in Ledger at Page 200—To suspense Account—Ex. CW 11/4-JJ(2) indicating mark 'M' (obviously Minister) against Rs. 24,500.
Khemka Aviation	Do.	23,823	10,720	Do.	Do.	Entry of withdrawal of Rs. 11,000 from the Bank, which was given to Shri C.P. Khemka (Marked KA/1 for identification).
Sanghi Aviation	Do.	1,000	450	Do.	Do.	..
MASTER LIST (Ex. CW. 2/16).						
25—10—1971 HANDED OVER BY SHRI CAMBATA TO SHRI ANBIL DHARMALINGAM—TOTAL AMOUNT PAID RUPEES 41,714.						
Agricultural Aviation]	First instalment of area sprayed from 19th September 1971 to 4th October 1971 at 45 paise per acre.	15,200	6,840	CW-8 Cambata, Page 40, CW-2 Captain, Page 24, CW-3 Krishnan, Page 14, CW-5 H.P. Rao, Page 6, Pat Dimney's affidavit Page 25.	CW-9 Hari Bhaskar, Page 33, CW-7 Vedanarayanan, Page 27, CW-1 Rajagopal (Pages 50-53), K. J. Maneckji's affidavit (133), Paragraphs 50 to 58, James Fredricks affidavit (AW. 18), Paragraph 17.	(i) Page 244 of the statement of Account produced by CW-3, Krishnan (Ex. CW. 3/1) showing receipt of Rs. 12,000 from his Head Office on 24th October 1971. (ii) Corresponding entry at page 182 of the Cash Book (Ex. CW3/1—A).

Avindia	..	Do.		8,677	3,905	Do.	..	Do.	..	(i) Entry, dated 21st October 1971 at Page 65 of Cash Book [Ex. CW. 11/4-03(5)] showing Payment of Rs. 15,664 to Captain after withdrawal from the Bank. (ii) Corresponding entry in Ledger, Page 209 showing debit of this amount against Commission Account.
Cambata Aviation	..	Do.	..	13,720	6,174	Do.	..	Do.	..	(i) Voucher No. 150, dated 26th October 1971 (Ex. CW. 8/30-E) for Rs. 6,000 towards promotional expenses. (ii) Entry at Page 152 of the Ledger showing debit of this amount against promotional expenses.
Mahindra and Mahindra Aviation.	..	Do.	..	23,120	10,404	Do.	..	Do.	..	Stay of Shri Dastoor in Connemara Hotel on 25th October 1971 reflected at Page 584 of the Hotel Register (Ex. 11/4GG-18, 19 and 20).
Maneckji Aviation	..	Do.	..	10,700	4,815	Do.	..	Do.	..	(i) Telegraphic transfer of Rs. 15,000 from Bombay office to Union Bank, Madras which was received by Pat Dimney on 23rd October 1971 (MA/8). (ii) Entries at Page 176 of the Cash Book and 127 of the Ledger, dated 22nd October 1971 indicating advance of Rs. 23,000 to Dimney (M.A./9).
Pushpaka Aviation	..	Do.	..	21,282	9,576	Do.	..	Do.	..	(i) Entry at Page 209 of the Cash Book, Ex. 11/4-KK (9) showing receipt of Rs. 10,000 withdrawn from the Bank on 23rd October 1971 by Shri H. P. Rao. (ii) Debit of Rs. 10,000 to Suspense account of Shri H. P. Rao-Ex. CW. 11/4-JJ(2). MASTER LIST (EX. C. W. 2/17).
..			

6—11—1971 — HANDED OVER BY SHRI CAPTAIN TO SHRI ANBIL DHARMALINGAM—TOTAL AMOUNT PAID RUPEES 52,476

Agricultural Aviation	..	2nd instalment of acreage done up to 4th October 1971 and 1st instalment of acreage up to 12th October 1971.	(Additional up to 12th October 1971.) 9,800	11,250	CW-2 Captain, Page 24, CW-3 Krishnan, Page 14, Affidavit of H. P. Rao, Page 57, Affidavit of Pat Dimney, Page 26.	CW-9 Hari Bhaskar, Page 33, CW-7 Vedanarayanan, Page 27, CW-8 Cambata, Pages 40 and 41, KJ Maneckji's affidavit (133), paragraph 50 to 59 James Fredrick (AW-18.), Para 17, CW-1 Rajagopal (Pages 50-53).	(i) Entry at Page 185 of the statement of A/c. prepare by Shri Krishnan (Ex. CW. 3/1) showing receipt of Rs. 30,000 on 3rd November 1971 and Rs. 10,000 on 6th November 1971 by telegraphic transfer from his Head Office. (ii) Corresponding entry at page 202 of the Cash Book (Ex. 3/1-A).
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<i>Name of the Aviation Company.</i>	<i>Period for which commission was paid.</i>	<i>Acreage sprayed.</i>	<i>Amount of Commission.</i>	<i>Oral evidence direct.</i>	<i>Oral evidence corroborative.</i>	<i>Documentary evidence.</i>
(1)	(2)	(3)	(4) RS.	(5)	(6)	(7)
Avindia	2nd instalment of acreage done up to 4th October 1971 and 1st instalment of acreage up to 12th October 1971.	..	3,905	CW-2, Captain, Page 24, CW-3, Krishnan, Page 14, Affidavit of H.P. Rao, Page 57, Affidavit of Pat Dimney, Page 26.	CW-9, Hari Baskar, Page 33, CW-7, Vedanarayanan, Page 27, CW-8 Cambata, Pages 40 and 41, KJ Maneckji's affidavit (133), paragraph 50 to 59 James Fredrick (AW-18.), Para 17, CW-1 Rajagopal (Pages 50-53).	Entry, dated 3rd November 1971 Page 75 of the cash Book (Ex. 11/4-00(6)) indicating T.A. advance of Rs. 1,600 to Captain.
Cambata Aviation	Do.		6,174	Do. ..	Do.	Voucher, dated 3rd January 1971 (Ex. CW-8/30-F) Rs. 6,427 withdrawn from the Bank for promotional expenses and paid to James Fredrick.
Mahindra and Mahindra Aviation.	Do.	1,860	11,250	Do., ..	Do.	
Maneckji Aviation ..	Do.	8,960	8,847	Do.	Do.	Entry at page 127 of the Ledger and page 1 of the Cash Book showing advance of Rs. 5,000 on 2nd November 1971 to Pat Dimney (M.A./10).
Pushpaka Aviation ..	Do.	3,718	11,250	Do.	Do.	.. (i) Entry at page 5 of the Cash Book (Ex. CW-11/4-MM) showing receipt of Rs. 17,500 on 5th November 1971 by H. P. Rao from M/s. Shiv Prakash Janakraj. (ii) Transfer voucher No. 5, dated 8th November 1971 showing Rs. 11,250 in Suspense A/c. (P.A./1).
MASTER LIST (Ex. CW-2/18).						
25-11-1971—HANDED OVER BY SHRI CAMBATA TO SHRI ANBIL DHARMALINGAM—TOTAL AMOUNT PAID RUPEES 53,359.						
Agricultural Aviation ..	Second instalment of area sprayed up to 12th October 1971 and First instalment of area sprayed up to 16th November 1971.	From 12th October 1971 to 16th November 1971. 40,600	22,680	CW-8 Cambata, page 42, CW-3, Krishnan, page 15, Affidavit of Pat Dimney, Para 26, affidavit of Khemka, paragraph 45.	CW-9 Hari Bhaskar, page 33, CW-7 Vedanarayanan, page 27, CW-2 Captain, page 25, K. J. Maneckji (Affidavit 133) James Fredrick (Additional witness) Para 17, CW-1 Rajagopal (pages 50-53).	(i) Entry at page 121 of the Statement of A/c. produced by Shri Krishnan (Ex. CW-3/1) showing receipt of Rs. 30,000 by telegraphic transfer from his Head Office on 25th November 1971. (ii) Corresponding entry at page 246 of the Cash Book (Ex. CW-3/1-A).

Avindia	..	..	Did not pay	..	14,523	Nil.	Do.	Do.	..	(i) Entry at page 89 of the Cash Book Ex. CW-11/4-00 (7) showing advance of Rs. 700 to Captain for Madras trip which was subsequently refunded as he did not go.
										(ii) Entry at page 96 of the Connemara Hotel Register (Ex. CW.11/4-HH 3 and 4) showing that although reservation had been made for Shri Captain, he did not stay at the Hotel.
Cambata Aviation	..	..	Paid	..	19,973	8,988	Do.	Do.		Entry, dated 31st March 1972 showing payment of Rs. 10,400 by Cambata to James Fredrick under Transfer voucher 80 which is not traceable.
Mahindra and Mahindra Aviation.			Did not pay	..	34,200	Nil.	Do.	Do.		Page 96 of the Connemara Hotel Register (Ex. CW. 11/4-H H 3 and 4) showing that Dastur did not stay at this Hotel on 25th November 1971.
Maneckji Aviation	..	..	Paid	..	28,900	17,037	Do.	Do.		(i) Entry at page 16 of the Cash Book showing advance of Rs. 10,000 sent to Pat Dimney on 23rd November 1971 (M.A./10).
										(ii) Statement of A/c of Union Bank of India, Madras, showing transfer of Rs. 15,000 from Bombay on 24th November 1971 and withdrawal of this amount on the same date (M.A./11).
Pushpaka Aviation..	..	..	Did not pay	..	35,400	Nil.	Do.	Do.	....
Khemka Aviation..	..	..	Paid	..	7,743	3,484	Do.	Do.		Entry in the Cash Book, dated 25th November 1971 showing withdrawal of Rs. 3,900 by cheque and payment of this amount to Shri C. P. Khemka (K.A./2).
Sanghi Aviation	..	..	Paid	..	2,600	1,170	Do.	Do.	....

MASTER LIST EX. CW. 2/19.

23-12-1971—PAID BY SHRI CAMBATA TO SHRI ANBIL DHARMALINGAM — TOTAL AMOUNT PAID RUPEES 64,502.

On account of legal notice of Rajagopal, dated 16th November 1971, paid second instalment and arrears for areas sprayed up to 16th November 1971.

<i>Name of the Aviation Company.</i>	<i>Period for which commission was paid.</i>	<i>Acreage sprayed.</i>	<i>Amount of Commission, RS.</i>	<i>Oral evidence direct.</i>	<i>Oral evidence corroborative.</i>	<i>Documentary evidence.</i>
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Agricultural Aviation	.. Did not pay	..	..	CW-8 Cambata, page 44, CW-2 Captain, page 25, H. P. Rao's affidavit paragraph 57, Pat Dimney's affidavit paragraph 28 and Khemka's affidavit paragraph 45.	CW-9 Hari Bhaskar, page 31, CW-7 Vedanarayanan, pages 25-26, CW-3 Krishnan, page 16, K.J. Maneckji (133), James Fredrick (A.W. 18), J.R. Modi (172), paragraph 49, CW-1 Rajagopal (pages 50-53).	....
Avindia	.. .. Paid	..	6,535	Do.	Do.	.. (i) Entry, dated 13th December 1971 at page 100 of Cash Book Ex. CW. 11/4-00 (9) showing receipt by Captain of Rs. 5,555.80 for payment of commission. (ii) Corresponding entry at page 209 of Ledger [Ex. CW. 11/4-00 (9A).]
Cambata Aviation	.. .. Paid	..	8,988	Do.	Do.	.. (i) Voucher No. 65, dated 15th December 1971 (Ex. CW. 8/30-G) showing withdrawal of Rs. 8,988 from Bank for promotional expenses. (ii) Corresponding entry at page 152 of the Ledger debiting the amount against promotional expenses (Ex. CW. 8/30-A).
ahindra and Mahindra Aviation.	Paid	..	15,390	CW-8, Cambata, page 44, CW-2, Captain, page 25, H. P. Rao's affidavit para 57, Pat Dimney's affidavit para 28 and Khemka's affidavit para 45.	CW-9, Hari Bhaskar, page 31, CW-7, Vedanarayanan, pages 25-26, CW-3, Krishnan, page 16, K.J. Maneckji (133), James Fredrick (A.W. 18) J.R. Mody (172), para 49, CW-1 Rajagopal (pages 50-53).	....

Maneckji Aviation	..	Do.	..	13,005	Do.	Do.	..	Entry in the Statement of A/c with Union Bank of India, Madras, showing telegraphic transfer of Rs. 13,000 from Bombay on 14th December 1971 and withdrawal of this amount by Pat Dimney on 15th December 1971 (M.A./12).
Pushpaka Aviation	..	Do.	..	15,930	Do.	Do.	..	....
Khemka Aviation	..	Do.	..	3,484	Do.	Do.	..	Entry, dated 9th December 1971 of withdrawal of Rs. 12,000 and payment to Shri C. P. Khemka (K. A./3).
Sanghi Aviation	..	Do.	..	1,170	Do.	Do.	..	....

FINAL LIST OF PAYMENT
(Ex. C.W. 2/20).

Explanatory Note

According to the final list (Ex. C.W. 2/20), the total amount paid as commission to the Ministers is Rs. 5,48,494. There is, however, a totalling mistake and the actual amount should be Rs. 5,48,500. This includes a sum of Rs. 18,450 paid by M/s Aircraft Society which was not a member of the Association. The amount paid by M/s Khemka Aviation is shown in the list as Rs. 28,439, while actually Khemka paid Rs. 28,408, i.e., there is an excess of Rs. 31. If Rs. 18,450 plus Rs. 31, i.e., Rs. 18,481 is deducted from the total amount of Rs. 5,48,500, the balance comes to Rs. 5,30,019.

2. The actual amount paid to the Chief Minister through Shri Vaithialingam was Rs. 1,42,273 and to Shri Dharmalingam Rs. 3,87,846, *vide* details given below:—

<i>Name of the Operator. S/Shri.</i>	<i>Paid to Shri Vaithialingam.</i>	<i>Paid to Shri Dharmalingam.</i>	<i>Total.</i>
(1)	(2)	(3)	(4)
	RS.	RS.	RS.
(a) H. P. Rao	25,000	78,860	1,03,860
(b) Khemka	10,720	17,688	28,408
(c) Cambata	22,700	52,900	75,600
(d) Sanghi	450	2,790	3,240
(e) Pat Dimney (Maneckji)	18,153	61,857	80,010
(f) Krishnan (Agricultural Aviation)	24,750	65,520	90,270
(g) Captain (Avindia)	18,000	32,345	50,345
(h) Dastur (Mahindra & Mahindra)	22,500	75,786	98,286
	<hr/> 1,42,273 <hr/>	<hr/> 3,87,746 <hr/>	<hr/> 5,30,019 <hr/>

The total of this comes to Rs. 5,30,019.

3. According to the Master List (Ex. CW-2/19), the total acreage sprayed up to 16th November 1971 was 6,16,500. The commission calculated at 90 paise per acre for this acreage is Rs. 5,54,850. Shri Krishnan of Agricultural Aviation did not pay on 23rd December 1971 a sum of Rs. 18,270 due from this concern. Similarly, Shri Captain of Avindia, did not pay on 25th November 1971 a sum of Rs. 6,535 due from this concern. The total of these two amounts comes to Rs. 24,805 and if this is deducted from the calculated commission of Rs. 5,54,850, the balance comes to Rs. 5,30,045, which again almost tallies exactly with the actual amount paid.

4. According to the details of payments given in this chart, the total amount paid to the Ministers comes to Rs. 4,96,174. There is evidence to show that apart from the payments made on the different dates as indicated in this chart, Shri H. P. Rao of Pushpaka Aviator has separately paid Rs. 17,603 and Shri Dastur of Mahindra & Mahindra Aviation has also separately paid an amount of Rs. 15,242. The total of these two amounts comes to Rs. 33,845 and if this is added to Rs. 4,96,174, the total comes to Rs. 5,30,019.

CHAPTER IV.

ALLEGATION No. 12. AGAINST SHRI M. KARUNANIDHI AND SHRI S. MADHAVAN

(Loan to father-in-law of Shri S. Kandappan, M.L.A.)

This Allegation in the Memorandum of Shri M. G. Ramachandran, as extracted in the Annexure to the Notification setting up the Commission, reads as follows:—

“WATER BOARD CHAIRMAN—THIRU KANDAPPAN, M.L.A.

In the declaration of wealth filed by him for the year ending 31st March 1971, before Legislative Assembly, he has declared as under :

“ Net cash of Rs. 35,000 constituting the total income over a period of time inclusive of the cash bequeathed to me by my father—Rs. 35,000”.

If his income-tax records are verified, the peculiar statement, he has made, may prove as false. Moreover he is a very close friend of Chief Minister, who has appointed him as Chairman of Water Board which processes the Veeranam Project.

Thiru S. Kandappan used his influence over the Chief Minister and got a loan of Rs. 1.75 lakhs from Tamil Nadu Industrial Investment Corporation for his father-in-law, Rangaswami Gounder at Tiruchengode who made the application to T.I.I.C. for the loan to start an industry. No industry was started and money has been misappropriated for opening arrack shops. The T.I.I.C. Inspector reported this. The Chief Minister has directed the matter to lie over and the Industries Minister has fully co-operated with Thiru Kandappan to get the loan for Thiru Rangaswamy Gounder and Kandappan combine. The people of Tiruchengode are known for their patriotic tradition. Now, they have risen in revolt and are demanding action against Thiru Kandappan. Unless an enquiry is immediately ordered, the people will try him in people's court.”

The facts as gathered from the materials collected by the 5A Investigating Agency, the official files of the Tamil Nadu Industrial Investment Corporation Ltd. and the evidence on affidavits before the Commission are as follows:—

1. *Discrepancy in the declaration of wealth filed by Shri Kandappan, M.L.A.*—There are some factual inaccuracies in the memorandum of Shri M. G. Ramachandran. In the declaration of wealth filed by Shri Kandappan, M.L.A., before the Speaker of the Legislative Assembly for the year ending 31st March 1972 (and not 31st March 1971). Shri Kandappan did declare as under:—

“ Net cash Rs. 35,000 constituting the total income over a period of time inclusive of cash bequeathed by my father”.

Shri Kandappan did not declare, as alleged in the memorandum, that the cash bequeathed to him by his father was Rs. 35,000.

In his Income-tax return for the same period, i.e. the year ending 31st March 1972, Shri Kandappan has declared as under:—

“Cash balance—Accretion from agricultural income during a period of years—Rs.25,000”

The facts gathered by the Investigating Agency from his Income-tax returns for the account year ending 31st March 1969, may be summarised as follows:—

<i>Period to which the return relates.</i>		<i>Income declared.</i>
Year ending		RS.
31st March 1969	.. No income except salary as Member of Parliament ..	6,000-00
31st March 1970	.. Do. ..	6,000-00
31st March 1971	.. No other income except salary as M.L.A.	4,500-00
31st March 1972	.. Salary as M.L.A.	3,387-10
31st March 1972	.. Honorarium as Chairman, Tamil Nadu Water Supply and Drainage Board.	5,283-35

After transferring his income-tax file from Salem to Madras Salary Circle, he filed a revised return for the year ending 31st March 1972, in which he showed cash balance accrued from agricultural income during a period of years as Rs. 25,000. In connection with the return for the same year, he submitted an explanatory letter on 26th March 1973, in which he mentioned acquisition of a plot for a total consideration of Rs. 13,064 out of savings from his income as Member of Parliament. He also mentioned his having sold his car for Rs. 17,500 on 15th January 1971 to his brother-in-law, Shri S. R. Asaithambi, and he produced a copy of a partition deed, dated 18th April 1964, by which he had got a housing site in the village Chittur and also 32.66 acres of agricultural land.

For the year ending 31st March 1973, Shri Kandappan showed his gross salary as Rs. 9,500 and Rs. 1,050 as income from interest on Rs. 10,000 deposited with M/s. Sivasakthi Finance, Namakkal. In his explanation filed along with this return, he mentioned that in 1963, his father-in-law gifted him a Fiat Car. Later, he purchased another Fiat Car by investing some of his own money in addition to the sale proceeds of the old car for Rs. 14,000. It was this car which he then sold to his brother-in-law for Rs. 17,500. He also mentioned an average annual income of Rs. 7,000 to Rs. 10,000 from his agricultural lands for which Agricultural tax had been paid.

In his return for the year ending 31st March 1974 he declared a salary of Rs. 4,500 as M.L.A., Honorarium of Rs. 6,000 from the Tamil Nadu Water Supply and Drainage Board, and Rs. 1,050 as interest from Sivasakthi Finance.

In his return for the year ending 31st March 1975 he declared his gross salary and Honorarium as Rs. 9,260, and interest earnings as Rs. 1,789 including interest on 2 Fixed Deposits, totalling Rs. 20,000, with Syndicate Bank. He also mentioned his having started construction of a building at Anna Nagar, Madras, over which he had already spent Rs. 50,000 which was raised partly from loan from Housing Society and partly from loan from H.U.F.

Shri Palamalai, Executive Engineer of the Tamil Nadu Water Supply and Drainage Board in his statement before the Investigating Officer as well as in his affidavit filed before the Commission, has estimated the value of the house under construction by Shri Kandappan at Rs. 4 lakhs. He has further said that only Rs. 15,000 has been spent by Shri Kandappan and the rest has been contributed by various suppliers and contractors of the T.N.W.S.D. Board. He has also testified that one more house in the native village of Shri Kandappan was under construction.

The facts as revealed by the returns, read along with the statement of Shri Palamalai, do raise some suspicion that as Chairman, Water Supply and Drainage Board, Shri Kandappan might have acquired assets disproportionate to his known sources of income. But, this is strictly outside the terms of reference of the Commission. As far the allegations referred to the Commission for inquiry are concerned, it is true that there is some discrepancy between the declaration of wealth filed by Shri Kandappan for the year ending 31st March 1972, and his income-tax return for the same year. But, from the evidence placed before the Commission, it is not possible to draw any conclusion that the statement made by him before the Legislative Assembly for the year ending 31st March, 1971 was necessarily false.

2. Loan to Shri S. P. Rangaswami Gounder, father-in-law of Shri Kandappan, M.L.A.

Shri S. Kandappan who is a native of Tiruchengode, Salem district, is an active and prominent member of the D.M.K. Party. He was a Member of Parliament from 1962 to 1971 and in February, 1971, he was elected to the Tamil Nadu Legislative Assembly. When the Tamil Nadu Water Supply and Drainage Board was constituted into a statutory body with effect from 13th April 1971, Shri Kandappan was nominated as the first Chairman of the Board and he continued to occupy this post until he resigned after introduction of President's rule in the State. Shri S. P. Rangaswamy Gounder of Tiruchengode is the father-in-law of Shri Kandappan. M/s. R. K. Oil Mills near Salem Town is owned and managed by him. In 1966, he started M/s. Mani Rice and Oil Mills at Tiruchengode for extracting oil by rotary machine. In the same premises, he also had a paddy hulling machine.

On 19th May 1970, he applied to the Tamil Nadu Industrial Investment Corporation for a loan of Rs. 2 lakhs. The purpose of the loan as stated in the application, itself, was that it was required for the purpose of extension of factory with an expeller and other accessories and for the running capital of the business. The break up of Rs. 2 lakhs is as follows:—

	RS.
1. Machineries (Expeller, Steam Generator, Filter Press, 3 Oil tanks, 50 H.P. Motor starter and switch and other accessories).	59,250.00
2. Building (Machinery Hall, godown, etc.)	53,200.00
3. Running Capital	87,550.00
	<u>2,00,000.00</u>

The Tamil Nadu Industrial Investment Corporation is a Government controlled, incorporated under the Indian Companies Act on 26th March 1949 with an Authorised Capital of Rs. 10 crores. The State of Tamil Nadu holds more than 51 per cent of the shares issued by the Corporation. It was set up mainly for the purpose of giving long and medium term loans to industrial concerns primarily for the purpose of acquiring fixed assets in the shape of land, buildings and machinery and also as working capital in some very special cases where it is not forthcoming easily from the commercial Banks. Shri D. V. Narasimhan was the Secretary of the Tamil Nadu Industrial Investment Corporation and Shri C. S. Subramaniam was the Deputy Secretary, during the relevant period. According to the affidavit of Shri Subramaniam, Shri Kandappan himself came to the office of the Corporation along with Shri S. P. Rangaswamy Gounder, to present the application to Shri D. V. Narasimhan, the then Secretary. Shri Subramaniam has further testified that Shri Madhavan, the then Industries Minister, had also telephoned to him and asked him to see that the loan was sanctioned as quickly as possible.

Shri Rajappa, AW-6, who was Manager (Project) in T.N.I.I.C. has testified that in the earlier years when the Corporation sanctioned 2 loans to the Karnataka Vegetable and Oil Mills Ltd. and Thirukoiloor Oil Mills Ltd., its experience with these two oil Mills was not satisfactory. Further assistance to Oil units was thus, suspended and applications received from 4 Oil Mills, namely Coimbatore Oil Mills, Coimbatore, Rajagopal Oil Mills, Salem, Madras Oil and Fertilisers Private Ltd., Madras, and Poorna Rice and Oil Mills, Madras, had been rejected by the Corporation. Only in two cases, namely the cases of M/s. P. U. Sriramulu and Sons of Kaveripatnam and P. N. Ramaswami and Brothers, Singampuneri, loans were sanctioned by the Corporation to Oil Industries, and both Shri Rajappa and C. S. Subramaniam have testified that these loans were sanctioned at the behest of Shri Madhavan, then Minister for Industries.

On receipt of the application of Messrs. Mani Rice and Oil Mills, the office of the Corporation recommended on 19th June 1970 that the application may be considered and necessary investigation fees collected. By a letter dated 20th June 1970, the Corporation informed the firm that their application could be considered for a reduced sum of Rs. 1,77,800 inasmuch as 30 per cent of the eligibility for the working capital came to only Rs. 65,350. Shri Sivaraman, Engineer and Shri C. S. Subramaniam were then directed to inspect the factory, evaluate the assets and submit their reports. Shri Sivaraman submitted his report on 8th July 1970. Shri Subramaniam also subsequently submitted his report and both the reports were favourable. The Board on the basis of these reports sanctioned the loan of Rs. 1,77,000 at its meeting held on 25th August 1970. The break-up of the loan for different purposes was as follows :—

	RS.
1. Construction of building	53,200
2. Purchase of Machinery	59,250
3. Working Capital	64,500
	<hr/>
	1,77,000

Shri Rangasami Gounder did not avail of the loan immediately. On 22nd January, 1971, Shri T. R. Dharanidharan, the then Deputy Secretary of the Corporation, reminded him that the loan would be lapsing on the 25th February, 1971. On the 15th February, 1971 Shri Rangaswami Gounder requested in writing for revalidation of the loan for a period of three months, as there had been some delay in the matter of registration, etc.

On 23rd February 1971, Shri Rangaswami Gounder came to the office of the T.I.I.C. and gave six letters to Shri D. V. Narasimhan with regard to the sanction of the loan. In one of these letters, he has stated that he had already purchased an Expeller at a cost of Rs. 21,073.80, subsequent to the sanctioning of the loan and the unit was functioning with this new Expeller. He also enclosed a pro forma invoice, dated 1st February 1971 from Messrs. Dhanalakshmi Industries, Salem, regarding the purchase of the Oil Expeller. This led Shri Narasimhan to believe that the factory was in working condition and the immediate requirement of working capital as stated by Shri Rangaswami Gounder was genuine. He thereupon, instructed Shri T. K. Rajabhadar to process the application quickly and make disbursement early. Shri Rajabhadar was then Superintendent, Loan Services, in the T.I.I.C. According to his Affidavit, Shri Narasimhan told him that Shri Rangaswami Gounder was related to Shri Kandappan, prominent D.M.K. leader and disbursement of the loan should be made that day itself. On the same day, a disbursing note was prepared by the clerk concerned and after it was checked by Shri Rajabhadar, the Law Officer, General Superintendent, Deputy Secretary and Secretary, two cheques along with covering letters were prepared, one for Rs. 10,000 towards the Building account and another for Rs. 64,550 towards working Capital, which were handed over to Shri S.P. Rangaswamy Gounder on the same evening. Shri Rangaswami Gounder opened a current account with Indian Bank, Tiruchengode, on 28th April 1971 into which the cheque for Rs. 10,000 was deposited. On 4th June 1971, he withdrew Rs. 6,000 by cheque No. 665226 in cash, and on 3rd September 1971, he withdrew the

balance of Rs. 4,000 also in cash by Cheque No. 665227. The Cheque for Rs. 64,550 was deposited by him in the Gopalapuram Branch of Canara Bank, Madras, in the account of Messrs S.P.R. and Co. and it was transferred by telegram on the same day to Canara Bank, Fort, Salem, and paid in cash on 27th February 1971 to Shri Rangaswami Gounder.

Shri S. Kulandaivelu, Partner of Messrs Dhanalakshmi Industries, Salem, in his statement before the Investigating Officer as well as in his affidavit, has stated that Shri Rangaswami Gounder had merely asked him for a quotation, which had been enclosed to his application dated 19th May 1970. On 1st February 1971, Shri Gounder himself had requested Shri Kulandaivelu for a pro forma invoice which was given to him. Shri Gounder did not purchase any Expeller from him. Shri Rangaswami Gounder himself in his affidavit dated 9th July 1976 has admitted that he did not purchase any Expeller from Messrs Dhanalakshmi Industries. Just before purchase, he came across a second-hand Expeller and a Baby Boiler and purchased the same from the National Electric Rewinding Workshop, Salem on 29th April 1971. This amounts to a clear admission that the statement made in his letter, dated 23rd February 1971 to the T.I.I.C. that he had already purchased and installed the Expeller was false and since he had no machinery, there was no need for working capital for purchasing groundnut kernal. He had thus, induced the officers of the T.I.I.C. to sanction the loan to him by misrepresenting a fact which he knew to be false.

According to the indenture made on the 22nd of February, 1971, between Shri Rangaswami Gounder and the T.I.I.C, the said loan by the Corporation was to be used strictly for the purposes mentioned therein, namely, construction of building, purchase of machinery and working capital, and it could not be used for any other purpose whatsoever, without the previous written consent of the Corporation. The Corporation also had the right to call in the whole of the mortgage debt in default of payment of any instalment or other breach of the terms of the indenture.

When Messrs Mani Rice and Oil Mills did not pay the half-yearly and additional interest amounting to Rs. 2,981.81 due on 31st December 1971, Shri Kothandaraman, Inspector was deputed to inspect the premises of the Mill and also verify the machinery. He visited the premises on 7th April, 1972 and found that there was no activity at all in the Mill. All the portions of the Mill were found to be locked. An employee of the Mill informed him that Shri Rangaswami Gounder was not in station. When he contacted his residence over the telephone, he was informed by the daughter of Shri Rangaswami Gounder that he had gone to Madras. In the evening he again visited the 'Mill' and got the premises opened with the help of an employee who was there. He found two Rotaries, one Decardicator and one motor installed and also one Expeller non-installed. No books of accounts were produced in the absence of Shri Rangaswami Gounder. On making discreet enquires, he learnt that neither the Rice Mill, nor the Oil Mill had worked during the last six months or so. On 24th April 1972, the matter was reported to the Board at its meeting held on that date and the Board decided to issue foreclosure notice to the concern and to take immediate steps to recover the loan.

Another inspection was made by Shri Gopalakrishnan, Inspecting Officer, on 4th May 1972. At the time of his visit, also, the Mill was not working. The Expeller was in a semi-erected condition and the Inspecting Officer was informed by the Manager that the Expeller, Huller and Filter Press were purchased for about Rs. 25,000, after the sanctioning of the loan. The concerned vouchers were reported to be with Shri Rangaswami Gounder, who was not available. No books of accounts were produced, and so, the Inspecting Officer could not verify about utilisation of the loan. With regard to utilisation of the amount of Rs. 10,000 withdrawn from the special current account for construction of building, the Manager could not explain how it was spent by the proprietor.

According to Shri C. S. Subramaniam, immediately after the Board Meeting on the 22nd April, 1972, he received a telephone call from Shri Rathnasabapathy, the then Gazetted P.A. to Shri Madhavan, who told him that the Minister wanted that Shri Subramaniam should see him at the residence. Accordingly, Shri Subramaniam went to meet the Minister; and what happened at this meeting has been described by Shri Subramaniam in these words :—

“ When I met the Minister, he was furious and questioned me why the Board passed the resolution foreclosing the loan granted to Messrs Mani Rice and Oil Mills, Tiruchengode. I replied to him that Shri S.S.M. Subramaniam, Director of the Corporation complained that there was no activity at all in the Mills and that the loan advanced by the Corporation had been diverted for some other purpose, and when an inspection was conducted, it was reported that the Mill was closed for six months before the inspection and that as a result of the report, the Board of Directors passed a resolution foreclosing the loan and directing the recovery of the loan. Shri Madhavan thereupon, asked me whether I knew who Shri Kandappan was. I replied to

him that Shri Kandappan was a Member of Parliament. Shri Madhavan then said that Mr. Kandappan was a representative of the people and that the proprietor of the Mill was the father-in-law of Mr. Kandappan and the Board should not have passed such a resolution. He at once took up the telephone and rang up the Chairman of the Board of Directors, Shri A.M.M. Arunachalam and demanded from him why such a resolution was passed and directed him not to proceed any further."

Shri A. M. M. Arunachalam in his affidavit, has stated :

"At this distance of time, I do not remember whether Shri Madhavan spoke to me or not about the foreclosure of the loan granted to Mani Rice and Oil Mills. Since T.I.I.C. is a Tamil Nadu Government Corporation which comes under the purview of the Industries Minister, on many occasions I have spoken to the Minister and vice versa, regarding matters pertaining to the Corporation. On some other occasions we have also had personal discussions, but, as stated above, I do not remember whether Shri Madhavan spoke to me about the foreclosure of the said loan or not."

Shri V. Rathnasabapathy, the then Gazetted P.A. to Shri Madhavan, in his affidavit, has confirmed that there were a few occasions when, at the instance of Shri Madhavan, he had asked Mr. C. S. Subramaniam, the Deputy Secretary of the T.I.I.C., to meet the Minister.

Shri Subramaniam then informed Shri T. R. Dharanidharan about the directions issued by Shri Madhavan. According to Shri T. R. Dharanidharan, on being informed about the direction of Shri Madhavan, action against the Mills in regard to recovery of the disbursed loan was delayed, though the Corporation knew fully well that the disbursed loan was not utilised for the purpose for which it was sanctioned.

Subsequent inspections of the factory by various officers of the Corporation removed all doubts about misutilisation of the loan. Shri R. Kannan, Acting Branch Manager, inspected the factory on 3rd December 1973 and reported that there was "no specific symptom to show that the unit is working." Shri S. V. Parthasarathy, Maintenance Civil Engineer in the P. S. G. Industrial Institute visited the factory at the request of the Corporation on 17th June 1974. There was no name board in front of the site or at the building and from the appearance of the factory, it appeared that it was not running for the previous one year. Shri Parthasarathy again visited the factory on 24th March 1976 with Shri A. Devarajulu, and even on this occasion, neither the proprietor nor any record was available.

Shri A. Devarajulu, Technical Manager in the P.S.G. Industrial Institute, visited the factory on 19th March 1975 and prepared a Evaluation Report. According to this report, the parts of the Oil Expeller were found lying on the floor dismantled, and it could only be valued as scrap at about Rs. 3,000. According to his report, the valuation of the entire machinery found in the factory on 19th March 1975 was only Rs. 24,850.

Shri C. Shanmugham, who visited the factory at the request of the Corporation along with Shri A. Devarajulu, has fully corroborated what Shri Devarajulu has said in his Evaluation Report.

The Investigating Officer appointed by the Commission had summoned Shri Rangaswami Gounder to appear with his account books, so as to give him an opportunity of explaining how he had utilised the loan. After consulting his ledger, Shri Rangaswami Gounder has stated that out of the sum of Rs. 64,550 towards working capital drawn by him, he had incurred the following expenditure :—

	RS.	P.
Expeller	12,500	00
Boiler	3,500	00
For digging well for constructing cement tank and pipes..	6,312	90
Cost of threshing	7,400	00
Closing the well and alteration to the godown	2,712	15
Insurance and Registration	2,332	20
	<hr/>	<hr/>
	35,267	25

He claimed to have spent the balance in his business but could not point out any particular entry in the ledger. He could not also show any entry about the manner in which he had spent Rs. 10,000 drawn by him on 4th June 1971 and 3rd September 1971 from the Indian Bank, Tiruchengode. He also admitted that he had not purchased any Expeller from Messrs Dhanalakshmi Industries, Salem, either before or after the drawal of the loan.

Shri Rangaswamy Gounder has subsequently filed an affidavit, in which he has stated that he was forced by the Investigating Officer to sign a prepared statement. This is manifestly incorrect. Firstly, the allegation is much too belated. He did not make any such allegation soon after the statement was recorded on 19th July 1976. His affidavit was sworn along with the affidavits of the respondents on the 9th September at Madras and the allegation made therein thus, clearly appears to be an after-thought. Secondly, there is nothing in the statement made by him before the Investigating Officer other than what is apparent from his own books of accounts.

It has thus been conclusively established that the loan was misutilised and was not spent for the specific purpose for which it was sanctioned. The decision to foreclose the loan was, therefore, perfectly proper and legal which was well within the rights of the Corporation. There was no subsequent resolution of the Board cancelling their decision to foreclose the loan, or to take steps for its recovery.

In these circumstances, it has to be considered whether the officers of the Corporation on their own could have with impunity, ventured to defy the resolution of the Board and not take any follow-up action with regard to foreclosure and recovery of the loan.

Shri V. Srinivasan, Manager (Legal) of the T.I.I.C. in his statement before the Investigating Officer as well as in his affidavit, has deposed that it was his responsibility to take follow-up action and to issue legal notices to the defaulters. During the years 1970, 1971, and 1972, action for foreclosing the loans and issue of legal notices was taken in as many as 17 cases. From the statement enclosed with the affidavit of Shri Srinivasan, it is clear that in all these cases, action was taken to issue legal notices soon after the resolution of the Board was passed. At the same meeting held on 24th April 1972 in which the Board resolved to take action against Meni Rice and Oil Mills, similar action was also ordered in four other cases. Shri Srinivasan took prompt action in all those cases, excepting in that of Mani Rice and Oil Mills. Since both Shri Dharanidharan and Shri Subramaniam instructed him not to issue the foreclosure notice, he did not take any steps whatsoever in the matter.

The Allegation contained in the memorandum of Shri M. G. Ramachandran, further, suggests that the money was misutilised by Shri Rangaswami Gounder for opening Arrack shops. Although a number of witnesses examined by the Investigating Officers have deposed that Shri Rangaswami Gounder was participating in toddy business, there is no cogent evidence to show that the loan drawn by him from the T.I.I.C. was actually utilised for this business. As soon as it was established that the loan had not been utilised for the purpose for which it was sanctioned, the exigibility clause of the terms and conditions of the loan, became operative and the further question as to for what other purpose it was actually utilised was immaterial.

Shri Madhavan in his affidavit, dated 8th September, 1976, has denied that he had either interfered or secured the loan for Shri Rangaswami Gounder, or that he had directed the T.I.I.C. to delay action for recovery of the loan in pursuance of the resolution of the Board. He has however, admitted that whenever any industrialist approached him with a proposal for starting a new industry, he thought it was his duty to guide him, and on some occasions to direct him to the officers of the T.I.I.C. Even if he had mentioned about the application of Shri Rangaswami Gounder to the officers of the T.I.I.C., it was their responsibility to scrutinise the application and arrive at a proper decision on merits. With regard to the foreclosure matter, he says that even if he had wanted to interfere in the matter, he would not have approached an underlink like C. S. Subramaniam, but would have probably mentioned it to the Managing Director or the Chairman.

Shri Madhavan's role, however, becomes very clear when in the reply sent to the Prime Minister on the charges contained in the memoranda of M. G. Ramachandran, the then Managing Director, Shri Poonja in a D.O. letter sent by him on 28th November 1972 to the Secretary, Industries Department, reported that the closure of the Mill was later attributed to the seasonal nature of operation of Oil Mills. This was obviously, an over-simplification of the case and a calculated under-statement to minimise the extent of the lapses committed on the part of the loanee.

Shri Poonja in his affidavit has said that he had sent this note for being placed before the Minister for Industries and it was not based on his personal knowledge but on what he learnt from the loanee himself and also from the office staff. He has further stated that in the note submitted by him, he had absolved the Minister from involvement or interference in the proceeding relating to the sanction, disbursement or follow-up action on the foreclosure or recovery of the loan because there was nothing on record in writing to implicate the Minister.

If the officials of the Corporation did not process the loan application properly, that the loan was not properly utilised for the purpose for which it was sanctioned, and that inspite of the resolution of the Board, the officials of the Corporation were not taking follow-up action to foreclose the loan and effect speedy recovery, the normal, proper conduct of Shri Madhavan as Minister-in-charge of the Industries Department, should have been to take prompt disciplinary action against the officers of the Corporation for dereliction of duty, at any rate after all these facts had pointedly come to his notice from the memorandum of Shri M. G. Ramachandran. Instead of doing so, he got a note from Shri Poonja justifying the sanction of the loan as well as the hold-up of the follow-up action on the foreclosure resolution passed by the Board.

From the file of the T.I.I.C., it is clear that when the rejoinders of S/Shri M. G. Ramachandran and M. Kalyanasundaram to the reply sent by the Tamil Nadu Government on their allegations were received in the Industries Department of the State Government, Shri Madhavan had desired that para wise comments should be furnished by the Corporation for drafting a reply to the rejoinder. The covering letter to Shri Poonja's note addressed to the then Secretary, Industries, Shri Harbans Singh, also makes it clear that he was forwarding a note to enable the Secretary to draft a reply to the rejoinders. In another letter to Shri Harbans Singh, Shri Poonja had requested him to place his note before the Minister, Industries.

Shri Madhavan himself in paragraph 21 of his affidavit, dated 8th September, has observed that there was really no extraordinary delay in taking action on the recovery of the loan and "as far as his information goes, the Corporation rarely took legal action for recovery of its dues". In the printed reply sent to the Prime Minister, there is a categorical assertion by Shri Karunanidhi that the loan was not utilised for any other purpose and that the allegation that it was misutilised was false. The affidavit of the then Gazetted P.A. to Shri Madhavan, Shri V. Rathanasabhpathy, contradicts Shri Madhavan's assertion that he never sent for Shri C. S. Subramaniam at any time.

I am inclined to believe the evidence of the officials of Corporation because it stands substantially confirmed by the tell-tale, negative and positive circumstances which surround the transaction in question.

Although in the memorandum of Shri M. G. Ramachandran it has been alleged that Shri Kandappan used his influence with the Chief Minister to get the loan sanctioned, there is no evidence to connect Shri Karunanidhi, in any way with this transaction.

After a careful consideration of all the evidential material on record, I am of opinion that the following points have been clearly established;—

1. The loan was sanctioned without proper verification. It was only on 11th August 1970 that a reference was made to the Advocate of the Corporation for opinion. It seems that the Advocate's opinion was never received, but on a note put up by the Secretary on 19th August 1970, the T.I.I.C. sanctioned the loans on 25th August 1970. The following guidelines laid down in the Rules of the T.I.I.C. seem to have been ignored in the sanction of the loan:—

(i) Para (a) of Chapter-I [Functions and Rule 9 (b) of the Corporation's Rules] printed under the title "Guide to Applicants" make it clear that long and medium term loans were to be sanctioned primarily for the purpose of acquiring fixed assets in the shape of land, buildings and machinery, and it was only in very special circumstances the Corporation could sanction a portion of the loan for working capital. There appears to have been no examination as to how the case of Mani Rice and Oil Mills could be treated as a special case, making it eligible for a working capital loan of Rs. 64,550.

(ii) Under Rule 3 (c) where a loan or part of a loan is primarily for purchase of machinery, the Corporation will make direct payments to the manufacturers of machinery or their Bankers against presentation of documents evidencing consignments of machinery. In this case, payment was made direct to Shri Rangaswamy Gounder in violation of this rule.

(iii) The applicant Shri Rangaswami Gounder, had never stated in his application or in any subsequent letter that oil had ever been produced by the rotaries. The Inspection Report of Shri Subramaniam, however, contained the following observation:—

"I learn, that rotaries will continue to be used till the Expeller is installed and works". Several consequent inspections of the Mills revealed that at no point of time any oil had been extracted at this Mill.

2. The disbursement was made in a hurry, obviously under pressure and without due scrutiny. The officials of the Corporation were induced to make the disbursement by the deliberate misrepresentation made by Shri Rangaswamy Gounder in his letter, dated 23rd February 1971, that he had already purchased and installed an Expeller. It is significant to note that although the

loan had been sanctioned six months earlier, the loanee had not evinced any particular interest in getting the amount and had to be reminded several times by the Corporation. But he suddenly came up with a letter on 23rd February 1971 and demanded post-haste disbursement of the loan. He also transferred the working capital loan of Rs. 64,550 by telegraphic transfer to the Salem Branch of the Canara Bank and withdrew the entire amount in cash the very next day. There is no subsequent explanation as to how this amount was utilised. There is room for suspicion that in February 1971, there was some urgent need other than installation of Expeller, for Shri Rangaswamy Gounder to withdraw the amount all of a sudden. In Shri Kannan's affidavit it has been pointed out that in February 1971 there were General Elections in the State of Tamil Nadu and Shri S. Kandappan was a candidate for the Assembly from Tiruchengode Constituency. Although this is an insinuation, it cannot be summarily dismissed, as has been done by Shri Madhavan in his affidavit as "mischievous and baseless".

The entire working capital of Rs. 64,550 was also disbursed in one lump-sum. Even according to the claims of Shri Rangaswamy Gounder, he intended to spend only Rs. 10,000 for the building and he required only Rs. 21,073 for reimbursement of the cost of the Expeller installed by him.

3. The loan was not spent for the purpose for which it was sanctioned and was, certainly misused.

Since Shri Rangaswamy Gounder obtained the loan by deliberate misrepresentation on the basis of a bogus invoice in support of a purchase which never took place, and in fact he misutilised the loan, his prosecution for the offence of cheating was a matter to be considered by the Board. But they never considered or took such action except to decide to issue foreclosure notice to him.

4. The officials of the Corporation failed to take follow-up action on the Board's resolution foreclosing the loan. On the other hand, a further inspection was conducted on 4th May 1972 and a reminder was sent to Shri Rangaswamy Gounder on 16th June, 1972 asking him when he would be able to produce the accounts and other particulars for inspection. On 8th February, 1973, Shri Rangaswamy Gounder was asked to call on the Managing Director for a discussion. Further correspondence by way of excuses by Shri Rangaswamy Gounder for his inability to remit the arrears overdue, and reminders from the T.I.I.C., ensued. By February, 1976, the total amount outstanding was Rs. 88,235.74 (Principal : Rs. 74,545.45 plus interest Rs. 13,690.29). Out of this, Shri Gounder had repaid only Rs. 19,283.56. It is only after the imposition of President's rule that action for recovery of the loan has been taken against him by the Corporation.

5. Shri Madhavan, the then Minister for Industries, had exercised pressure on the officials of the Corporation at the time of the sanction and disbursement of the loan, as well as for delaying the follow-up action on the Board's resolution of foreclosure.

CHAPTER V.

ALLEGATION No. 15.

LAND FOR NEW GLOBE THEATRE

against

SHRI KARUNANIDHI, SHRI SHANMUGHAM AND SHRI MADHAVAN.

Allegation No. 15 in the Memorandum of Shri M. G. Ramachandran runs as follows :—

“ LAND FOR NEW GLOBE THEATRE

Mr. Varadaraja Pillai, lessee of the land is from Salem and an old associate of the Dravida Kazhagam for the past 30 years. He had this land on lease. The Ministry has brought an enactment to make the lessee the owner. This law is clearly passed only to enrich the party bosses. The benefit that has passed on to the Ministers in this deal believed to be substantial and the extent of the same will be obvious on an enquiry.”

The Commission called upon 41 witnesses who had been examined by the investigating officers under section 5A, to file their affidavits with reference to Allegation Serial No. 15 under inquiry.

The Commission also summoned and examined the following crucial witnesses who had also filed affidavits earlier in response to the notice under rule 5(2)(b) :—

- (i) Shri V. Sivaramasubramanian, son of late Shri Varadaraja Pillai.
- (ii) Shri J. N. Nagamiah, son of Shri Nagamiah Chettiar.
- (iii) Shri Basheer Ahmed, son of Shri Mohamed Ansar.

Facts of the case emerging, with full particulars, from the records, including the investigation report and the affidavits filed by the witnesses, are as follows :—

Shri M. Varadaraja Pillai of Salem took on lease land, Survey Nos. 2 and 3/18, Mount Road, Madras, measuring 11 3/4 grounds. This land is the property of the family of Kushal Dass of Madras, and Gopal Dass-Jagan Nath and Hari Dass—Girdhar Dass, deponents were its joint owners, with other family members, in 1964, when the lease had expired and litigation started. The lease deed was registered and is dated 17th November 1938. Originally, the lease was for a period of 15 years and 3 months.

According to the lease deed, it was agreed that the lessee, Varadaraja Pillai, would erect a building suitable for conducting cinema shows and dramatic performances on the said land, at a cost of not less than Rs. 50,000 and, after the expiry of the lease period, the lessors had the option to purchase the building constructed on the land at a fixed price of Rs. 50,000, less depreciation at the rate of 3 per cent per annum. The lessee constructed a cinema theatre called “New Globe Theatre” on the leased land. On the expiry of the first term of the lease, it was extended for a further period of ten years, which also expired on 29th February 1964. Under the original lease, the rent payable was Rs. 550 per month and upon renewal, the rent was fixed at Rs. 630 per mensem.

Before the expiry of the lease on 28th February 1964, the lessors sent a cheque for Rs. 50,000 (without deducting the depreciation) to Shri Varadaraja Pillai exercising their option to purchase the building constructed on the land. The lease of three other adjacent plots which had also been leased out to Shri Varadaraja Pillai, also expired on 29th February 1964. However, he refused to accept the money and part with possession in compliance with the terms of the lease. There upon, the lessors filed a suit in the Madras High Court for a declaration that they had become owners of the building in question, and, if necessary, for a direction to the defendant, Varadaraja Pillai to execute a conveyance vesting the building in favour of the plaintiffs with effect from 1st March 1964 (C.S. No. 28 of 1964).

The suit was dismissed. The plaintiffs filed a Special Appeal (O.S.A 35/1967) to the Division Bench of the Madras High Court. The Bench dismissed the appeal and confirmed the judgement of the Single Judge. The lessors went in further appeal before the Supreme Court. The Supreme Court, by its judgement dated 18th August, 1971 in C.A. No. 74 of 1971, allowed the appeal, declaring the lessors as owners of the building as from 1st March 1964, and ordered that possession of the building constructed on the land should be handed over to them. At the request of the defendant, Varadaraja Pillai, the Supreme Court granted him six months’ time for delivery of possession to the plaintiff-appellants. This period was to expire on 17th February 1972.

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Varadaraja Pillai did not hand over possession of the land and buildings in view of the amendment of the Principal Act by Tamil Nadu Act of 1972. He filed three applications in the High Court of Madras (Application Nos. 437, 438 and 439 of 1972 in C.S. No. 28 of 1964) for a direction that the lands may be sold to him and for stay of execution of the Supreme Court's judgment. A Division Bench of the Madras High Court which heard the above applications held that the decree of the Supreme Court, dated 18th August 1971, was fully binding and that the Amending Act could not help Shri Varadaraja Pillai to supersede the decree of the Supreme Court.

Varadaraja Pillai filed application for a certificate of fitness to appeal to the Supreme Court but it was also dismissed. Thereupon, he filed a Special Leave Petition before the Supreme Court against the above said order. The Supreme Court admitted the Special Leave Petition and issued an *ad-interim* order staying operation of its decree, dated 18th August 1971, for handing over possession of the land and building to the lessors. On 10th January 1973, the stay was made absolute on an undertaking given by Varadaraja Pillai before the Supreme Court that he would deliver vacant possession of the land and building, within a period of three months from the date of disposal of the appeal, in case he failed in the appeal.

Thereafter, Varadaraja Pillai filed a Review Petition (No. 12 of 1973) in the Supreme Court based on the amending Act 4 of 1972, which was dismissed on 12th March 1973.

The appeal in the Supreme Court was directed to be heard in the first week of April 1973. The Bill to further amend the Madras City Tenants' Protection Act was passed by both Houses of the Tamil Nadu Legislature on 5th April 1973, which was the last date of the Session of the Legislature.

The Supreme Court Bench consisting of Mr. Justice Shelat, Acting Chief Justice, Mr. Justice A. N. Ray, as he then was, and Mr. Justice Jagan Mohan Reddy heard the appeal on 11th April 1973 and 12th April 1973. Before the delivery of the judgment, Mr. Justice Shelat resigned. The appeals were then posted for direction on 4th May 1973 when the Counsel for Varadaraja Pillai insisted on a rehearing. The appeals were therefore directed to be posted after the vacation.

The assent of the President to the amending Act was given on 27th July 1973.

On the basis of the Amending Act 24 of 1973, Varadaraja Pillai filed another Review Petition (No. 38 of 1973) in the Supreme Court which was allowed to be withdrawn on 30th August 1973.

On 27th September 1973, Varadaraja Pillai withdrew the appeals pending before the Supreme Court and instituted fresh proceedings before the Madras High Court, City Civil Court and Small Causes Court, Madras under the Amending Act 24 of 1973. In the Madras High Court, he filed two applications, one for the review of the Supreme Court judgment and the other for a direction that the land should be sold to him.

Varadaraja Pillai did not hand over possession of the land and building after the expiry of the three months' period agreed to by him in his undertaking given on 10th January 1973 before the Supreme Court. Therefore, the lessors instituted contempt proceedings against him before the Supreme Court on 12th January 1974. As per the directions of the Supreme Court, Varadaraja Pillai handed over possession of the land and building to the lessors on 24th March 1974.

Sivaramasubramanian (C.W. 25) stated before this Commission that his father, Varadaraja Pillai (since deceased) had taken the site of the Globe Theatre on lease from Haridas Giridhardas in 1938. After deposing to the main terms of the lease and the history of the litigation between the lessors and his father, the witness stated that the Supreme Court directed his father to restore the possession of the site and the building to the land lord within a period of six months from the date of its decision, i.e. by 17th February 1972. He produced Ex. C.W. 25/2, a certified copy of the Supreme Court's order, dated 18th August 1971. The witness further stated that, instead of complying with that order of the Supreme Court, his father tried to get the Madras City Tenants' Protection Act amended. Nagamaiah and Basheer Ahmed (C.Ws. 27 and 28) were close friends of his father. Witness had often seen them meeting his father. In November 1971, his father fell ill and was admitted in the Vijaya Nursing Home, Royapuram, Madras, where he remained up to 9th February 1972. One day, whilst in the nursing home, in or about January 1972, his father asked the witness to meet Mrs. Ananthanayaki, M.L.A., (an Advocate belonging to the Congress Party), as also Shri O. N. Sundaram, M.L.A. (Congress). His father gave him a petition (Ex. C.W. 25/3) with the direction to take it to these MLAs in order to get their signatures. Witness complied accordingly. Mrs. Ananthanayaki, M.L.A. was an Advocate of the uncle of the witness, Shri Sivagnanam Pillai, while Shri O. N. Sundaram was their relation.

Witness further deposed that about two weeks after his admission in the Nursing Home, his father asked him one evening to take the amount of Rs. 30,000, kept in a safe in their house at No. 2, Warren Road, Madras, and to give the same to the Chief Minister, Shri Karunanidhi. Witness understood that his father had told the Chief Minister that he (witness) would be coming to his (Chief Minister's) house to hand over the amount. The witness found the amount of Rs. 30,000 in a brown cover in the safe of his house. He took that cover containing the money to the Chief Minister's house in Gopalapuram at about 8 p.m. He sent a slip bearing his name and that of his father through a peon to the Chief Minister who was sitting alone in a room upstairs. The witness was then called upstairs and the peon ushered the witness into that room. The Chief Minister received the cover and said 'Sari' (all right). The Chief Minister did not, in the presence of the witness, examine the contents of the cover, or check-up the currency notes. After handing over the money, the witness returned to the nursing home and reported compliance to his father.

Sivaramasubramanian further stated that, in February 1972, the Madras City Tenants' Protection Act was amended by Act (No. 4 of 1972) which was passed by the State Legislature in about two months' time, after the payment of the money to the Chief Minister. After the amendment, his father filed a Review Petition in the High Court which was dismissed and the witness produced a certified copy of the order, Exhibit C.W. 25/4. The case was again taken up to the Supreme Court by his father. The landlords then filed a contempt petition in the Supreme Court, because his father had failed to hand over possession within six months of the previous order, dated 18th August 1972 of the Supreme Court. As a result, his father had to hand over the building and the site to the landlords in March 1974. His father died on 21st May 1974.

Witness further deposed that his father used to tell him that the market value of the land and the building of the Globe Theatre in 1971, was Rs. 25 lakhs.

The witness asserted that he had filed the affidavit (Ex. C.W. 25/4) before the Commission, voluntarily.

Identifying his signature on his statement recorded by the investigating officer under section 5A, the witness affirmed that he had made this statement voluntarily.

J. N. Nagamiah was examined as Commission's witness, C.W. 27, on 1st December 1976. He had been working as Honorary Magistrate in Madras between 1958 and 1961. He knew Varadaraja Pillai since 1968, when he was doing agency business under the name and style of 'Sivaram Sales Corporation'. The witness helped him in this business, as also in the management of Globe Talkies, since he had himself been a film distributor. Varadaraja Pillai told him that the plot of land on which the theatre was constructed was on lease with him, the owners being Messrs. Haridas Giridhardas. After the expiry of the lease, he was to hand over the vacant possession of the theatre to the landlords in lieu of a sum of Rs. 50,000. Varadaraja Pillai said that although he had won the case in the Madras High Court, the lessors had gone in appeal to the Supreme Court. At his request, the witness went to Delhi to arrange some Senior Advocate on behalf of Varadaraja Pillai. Witness, however, could not manage the same and informed Varadaraja Pillai accordingly. This was about the first week of August 1971.

Before leaving for Delhi, the witness added, he introduced his friend, Basheer Ahmed, to Varadaraja Pillai since he was also doing real estate business and he thought that Basheer Ahmed's services might be required by Varadaraja Pillai in the absence of the witness.

The appeal was decided by the Supreme Court against Varadaraja Pillai on 18th August 1971, whereupon, Varadaraja Pillai returned to Madras, while he went to Bangalore to attend his son's wedding. When he returned to Madras after 6 or 7 days, he got a message from Basheer Ahmed that Varadaraja Pillai wanted to see him. Thereupon, the witness along with Basheer Ahmed went to Varadaraja Pillai's house. Pillai told them that he wanted to make a representation to the Minister for getting the Madras City Tenants' Protection Act amended, failing which he would have to surrender the theatre. Varadaraja Pillai wanted to engage some lawyers who could exert political influence and the name of Shri Somasundaram, son of N. V. Natarajan, lawyer and Deputy Mayor of Madras Corporation, was suggested by the witness. Thereupon all the three met the lawyer who agreed to take up the matter. After a few days, however, the lawyer suggested that they should approach, for the purpose in view, Shri Vezhavendan, Advocate, who was then an M.L.A. and also an ex-Minister of Madras State. Varadaraja Pillai, Basheer Ahmed and the witness then met Shri Vezhavendan who agreed to accept their brief and suggested that petitions, similar to the one prepared by Varadaraja Pillai, be secured on behalf of other tenants, also. He suggested that these petitions were to be addressed to the Law Minister, Revenue Minister and the Chief Minister. A fee of Rs. 10,000 was settled, out of which, Rs. 1,000 was paid to him there. On Shri Vezhavendan's suggestion, the desired petitions were prepared and the witness and Basheer Ahmed secured the signatures of other tenants. Whilst in this process, one of the tenants suggested the name of Shri Venkataraman, Advocate, who was appearing in the Court in similar cases, of various tenants.

Witness and Basheer Ahmed approached Shri Venkataraman and gave him some cyclostyled copies of the petitions with them. Shri Venkataraman said that he would prepare another draft of the petition, which he did, and gave to Varadaraja Pillai who got it cyclostyled. Signatures of various tenants were obtained by Shri Venkataraman, Advocate, also, on these copies and later these were all dated 22nd October 1971.

The witness and Basheer Ahmed went to see Varadaraja Pillai and after a few days, as desired by him, all the three went to the house of Shri Vezhavendan, Advocate. At Varadaraja Pillai's request, Shri Vezhavendan got an appointment fixed with the Law Minister. Accordingly, Varadaraja Pillai, Basheer Ahmed and the witness went to the Law Minister's house on the appointed time and date in the company of Shri Vezhavendan. Before proceeding there, the Vakalathnama (Ex. CW-27/2) was executed by Varadaraja Pillai in the Advocate's favour. This petition along with the Vakalat, was handed over to the Law Minister (Shri S. Madhavan) who told them that he would do his best to secure the amendment of the Act.

A few days later, Varadaraja Pillai, on enquiry, told them that Shri Vezhavendan had presented his petitions to the Revenue Minister, Shri P.U. Shanmugham, and the Chief Minister Shri M. Karunanidhi. In November the witness and Basheer Ahmed went to the house of Varadaraja Pillai as desired by him, and he told them that Shri Vezhavendan had fixed up his appointment with the Revenue Minister, Shri P.U. Shanmugham. Shri Varadaraja Pillai desired the witness and Basheer Ahmed to accompany him to the Minister's house. Accordingly, all the three went there in a taxi. Varadaraja Pillai went inside the Minister's house, while the witness and Basheer Ahmed stayed back in the taxi. After meeting the Revenue Minister, Varadaraja Pillai and the Party returned to his house, where he told them that he had paid Rs. 40,000 to Shri Shanmugham, who had assured him that the Act would be amended, as desired. The Revenue Minister had further advised Varadaraja Pillai to see the Chief Minister.

In December 1971, Varadaraja Pillai had fallen ill and had entered the Vijaya Nursing Home. The witness and Basheer Ahmed went to see him. During the course of talk, Varadaraja Pillai disclosed to them that he had seen the Chief Minister through Shri Maran, then M. P., and that the Chief Minister had demanded Rs. 60,000 from him saying that only Rs. 40,000 had been paid so far, to the Revenue Minister. Varadaraja Pillai pleaded to the Chief Minister that he was able to manage only Rs. 30,000. He further told them that accordingly, he had sent the amount to Shri Karunanidhi, Chief Minister, through his son, Sivaramasubramanian. The money was paid to the Ministers for getting the Madras City Tenants' Protection Act amended.

In the middle of February 1972, the witness learnt that the Act had been amended. There upon the witness and Basheer Ahmed went and congratulated Varadaraja Pillai on the success of his efforts. Varadaraja Pillai said that he had to spend more than Rs. one lakh both to meet the Revenue Minister and the Chief Minister in order to get this Act amended.

The witness stated that he was examined by Dy. S. P. of the C. B. I. on 7th June 1976, to whom he had made his statement, voluntarily. Thereafter, on the 24th June 1976, he had filed an affidavit before the Commission.

Questioned why he had associated himself in the transactions, he stated that he did so as he hoped that Varadaraja Pillai would be able to retain his theatre and give it on lease to the witness or get the latter a stall there. He added that he did not join in giving the bribe to anyone, directly or indirectly. In fact, the witness deposed, Varadaraja Pillai never told them before the payment that he was going to bribe the Minister.

In answer to a question put by the Commission, the witness stated that Varadaraja Pillai's son was also present in the Nursing Home, when he disclosed to them about the payment made to the Chief Minister (through his son).

Basheer Ahmed was examined as C. W. 27 on 1st December 1976. He stated that besides running a watch company, he was doing 'real estate business'. He knew Nagamaiah (C. W. 26), who also did the same business and through him, he came to know Varadaraja Pillai.

Sometime in August 1971, Nagamaiah before his visit to Delhi, had introduced the witness to Varadaraja Pillai saying that the latter might require the services of the witness in the absence of Nagamaiah. Witness had a telephone at his shop and Varadaraja Pillai used to ring him up whenever he needed him.

Varadaraja Pillai also went to Delhi in connection with his case, and on his return, he rang up the witness and told him that he wanted to meet Nagamaiah. When Nagamaiah returned to Madras, the witness conveyed him Varadaraja Pillai's message and, accordingly, both went to see him (Varadaraja Pillai). He informed them that he had lost his case in the Supreme Court.

Varadaraja Pillai requested that they should help him in securing petitions, signed from various persons, in order to get the Madras City Tenants' Protection Act amended. Nagamaiah and the witness both agreed, and, after discussion, decided to approach Shri Somasundaram, a D. M. K. Lawyer, son of Shri Natarajan, D. M. K. Minister, for help. They discussed the case with the lawyer and paid him Rs. 1,000 as his fee. This advocate later suggested to them to engage Shri Vezhavendan, Advocate who was a D. M. K., M. L. A., and Ex-Minister too, and, as such, wielded influence on D. M. K. Ministry.

Thereupon, the witness accompanied by Nagamaiah and Varadaraja Pillai went to meet Shri Vezhavendan and asked him if he would be able to help them in getting the Act amended by exercising his influence on the Minister. Shri Vezhavendan assured them that he would be able to do so and demanded Rs. 10,000 as his fee. Varadaraja Pillai had been advised that unless and until the Act was amended, he would lose his property, viz., the Globe theatre. Varadaraja Pillai agreed to pay Rs. 10,000 to Shri Vezhavendan and paid him Rs. 1,000 as advance. The Advocate asked Varadaraja Pillai to have the petitions addressed to the Ministers signed by about 100 odd persons. The witness helped Varadaraja Pillai in getting the signatures of several tenants in the City.

At the suggestion of Shri Vezhavendan, they approached Shri Venkataraman, Advocate, who had been appearing in Courts in such cases and the petitions, already drafted, were shown to Shri Venkataraman. He re-drafted the petition and helped Varadaraja Pillai in getting signatures of some of his clients. These petitions were addressed to the Chief Minister, the Revenue Minister and Law Minister for the State.

About a fortnight later, Varadaraja Pillai wanted the witness and Nagamaiah to accompany him to the house of Shri Vezhavendan to get an appointment with the Law Minister, Shri S. Madhavan. All the three accompanied by Shri Vezhavendan, went to the house of the Law Minister in about October 1971. Before leaving for the Minister's house, Shri Varadaraja Pillai executed the "Vakalat" in favour of Shri Vezhavendan (Ex. C. W. / 27/2). They met the Law Minister at his residence, who assured them that he would try to help them in regard to the amendment of the Act.

A few days later, the witness and Nagamaiah received a telephone call from Varadaraja, on receipt of which both of them went to his house. Varadaraja Pillai told them that he had got an appointment with the Revenue Minister, Shri P. U. Shanmugham, and requested them to accompany him to the house of the Minister. Accordingly, all the three went to the house of Shri Shanmugham in a taxi. Shri Varadaraja Pillai went inside the house, while Nagamaiah and the witness waited in the taxi. After about half an hour, Varadaraja Pillai returned and all of them went back to his house, where Varadaraja Pillai told them that he had paid a sum of Rs. 40,000 to Shri Shanmugham who had promised to help him in the matter. The Minister had further suggested that Varadaraja Pillai should see the Chief Minister as well.

About a month later, the witness and Nagamaiah learnt that Varadaraja Pillai had fallen ill and had entered the Nursing Home. Thereupon they went to see him. Varadaraja Pillai told them that he had met the Chief Minister before entering the Nursing Home and that the Chief Minister had told Varadaraja Pillai that he (Pillai) had paid only Rs. 40,000 to Shri Shanmugham and that Varadaraja Pillai should pay a further sum of Rs. 60,000 to him for having the Act amended. Varadaraja Pillai replied to the Chief Minister that he would be able to pay only Rs. 30,000. Accordingly, he added he had sent the amount to the Chief Minister (Shri Karunanidhi) through his son, Sivaramasubramaniam.

In February 1972, the witness and Nagamaiah learnt that the Act had been amended and they went to Varadaraja Pillai and congratulated him. On this occasion, he told them that he had to spend over a lakh of rupees in this connection including the sum of Rs. 40,000 paid to Shri Shanmugham and Rs. 30,000 to the Chief Minister.

The witness stated that he did all this service to Varadaraja Pillai because the latter was a big man and a cinema owner, and he thought that Nagamaiah could, at any time get lease of the cinema, or a stall, in his theatre.

The witness identified some of the petitions like Ex. CW 27/2-0, on which he had helped Nagamaiah to get the signatures of the tenants.

Witness stated that he had made a voluntary statement before the Investigating officer nominated by the Commission and had also filed an affidavit before the Commission on 24th June 1976.

He deposed that he had received only expenses such as taxi fare, etc., from Varadaraja Pillai and had not taken any money from him or any other person in this connection. Varadaraja Pillai was an old man and Nagamaiah used to accompany him wherever he went, and Nagamaiah, in turn, asked the witness to accompany them on such occasions.

The Commission has examined the Government record (File No. G.O. Ms. No. 686, Revenue dated 2nd March 1972) relating to the amendment of the Madras City Tenants' Protection Act. At pages 1-7 of the file is a petition, dated 4th October 1971, from Shri Varadaraja Pillai, addressed to the Hon'ble Minister for Food and Revenue, Government of Tamil Nadu. An identical petition dated 3rd October 1971, addressed to the Hon'ble Minister for Industries and Law is to be found at pages 55-61 of this file. Both the petitions are signed by Varadaraja Pillai. On the petitions dated 4th October 1971, there is an order dated 26th October 1971 by Shri P. U. Shanmugham, Minister for Food and Revenue. It is as under:

"Secretary, Revenue :

Please examine and report.

(Sd.) P. U. SHANMUGHAM."

On the petition dated 3rd October 1971 there is an endorsement dated 20th October 1971, of the Minister for Law and Industries (Shri S. Madhavan). It reads:

"Secretary, Home :

Please examine.

(Sd.) S. MADHAVAN,
20—10—71."

Varadaraja Pillai has stated in these petitions that:

"He had constructed a cinema Theatre called Globe Theatre and some other buildings on the aforesaid land leased to him by Thiru Haridas Giridhardas and others. The lease-agreement expired on 28th February 1964. Under the lease deed, there was a stipulation that on the expiry of the lease the lessor should pay a sum of Rs.50,000 less certain depreciation as provided for in the deed and on receipt of the amount, the lessee should deliver possession of the land and buildings thereon to the lessors. The lessors filed a suit in the High Court, Madras for a declaration that they had with effect from 1st March 1964 become the owners of the building put up by the lessee.

The petitioner contested the suit on the ground among others, that he was entitled to the benefits conferred on the tenants under the Madras City Tenants' Protection Act, 1921, as amended in 1955 and, in particular, to the benefit under Section 9 of the said Act which conferred the right on the tenant to purchase the land at the price fixed by the Court. The High Court decreed the suit in favour of the lessee. On appeal a Division Bench of the High Court confirmed the Judgment of the single judge. The lessors, thereupon, filed a further appeal in the Supreme Court. The Supreme Court in C.A. 74 of 1971, following an earlier judgment of the same court in Mylapore Hindu Permanent Fund vs. K. S. Subramania Iyer (A.I.R. 1970-SC-1683) allowed the appeal and held that the lessee (Thiru Varadaraja Pillai) was not entitled to the protection conferred under the said Act in view of the proviso to Section 12 of the Act."

Varadaraja Pillai therefore, prayed that Section 12 of the Act be deleted with retrospective effect and a new section inserted "to nullify the effect of the judgment of the Supreme Court".

On pages 9—12, is a similar petition addressed to the Minister for Food and Revenue from one C.T. Senthilnathan, lessee of the land on which "Kamadhenu Theatre" had been constructed. This also contained a prayer to amend Section 12 of the Madras City Tenants' Protection Act and referred to the Supreme Court Judgment delivered in the case of Varadaraja Pillai.

At pages 13 to 45, 77 to 98 and 121 to 136 are cyclostyled copies of petitions, all dated 22nd October 1971, some addressed to the then Chief Minister, some to the Law Minister, and others to the Revenue Minister, all purporting to be from tenants affected by the Judgment of the Supreme Court in Varadaraja Pillai's case. In paragraph 5, and the column meant for the name of the Minister is left blank in all of them.

The petitions from S/Shri G. Pachiappan, M. Sriramulu and G. Ramachandran bear the endorsements, dated 22nd October 1971, 2nd November 1971, and 2nd November 1971 respectively, of the Minister for Food and Revenue (Shri P. U. Shanmugham).

The petition from Shri K. Kuppuswamy Pillai bears the endorsement of the Gazetted P.A. to the Chief Minister as follows :

“Secy.—Home—C.M. desires that this may be examined and file circulated.”

The petition from Shri M. Sriramulu Naidu bears the endorsement of the Minister for Industries and Law (S. Madhavan).

At page 75, is the Vakalat, which Shri K. Vezhavendan, Advocate and Shri Varadaraja Pillai had signed on 20th October 1971. The “Vakalat” is the same as is used in courts of law, but amendments have been made in hand to make it addressed to the Hon’ble Minister for Law at Madras. At pages 107, 141 and 153 there are 3 hand-written letters, on the letter-pad of Shri Vezhavendan, Advocate, M.L.A., dated 1st November 1971, 10th December 1971 and 11th December 1971, respectively, addressed to :

(i) the Revenue Secretary,

(ii) the Minister for Food and Revenue of the Tamil Nadu State.

With his letter addressed to the Revenue Secretary, the Advocate enclosed a copy of the petition of Shri Varadaraja Pillai, and requested for early steps to amend Section 12 of the Act.

The letter addressed to the Minister for Food and Revenue, mentions its subject as follows:

“*Reminding request* to expedite the process to amend Section 12 of the Tamil Nadu City Tenants’ Protection Act.”

The Minister for Food and Revenue endorsed in the letter as follows :—

“*Secretary, Revenue :*

Please speak.

(Sd.) P. U. Shanmugham,
11—12—71. ”

Secretary’s endorsement is as follows :

“Discussed with M (F & R) today.
Add to main file.

Sd———,
Secretary
21—12—71. ”

In the third letter addressed to the Chief Minister the learned Advocate has, *inter alia*, written as under :

“Kindly render justice, as the landlords in the city are seriously taking vigorous steps to evict the tenants by E.P. proceedings and kindly oblige.”

(Sd.) K. Vezhavendan,
Advocate.

Along with his letter, he had forwarded the “OPINION”, dated 7th December 1971, of Shri P. V. Rajamannar, former Chief Justice of Madras. In this note, which is at pages 155—163 of the file, Shri Rajamannar suggested that Government should take immediate steps to amend the Act to relieve the tenants from the great hardship caused by the Supreme Court Judgment (A.I.R. 1970-SC-1683 and A.I.R. 1971 S.C. 2366).

On page 186 of the file is a letter dated 22nd January 1972 from Thirumathi T.N. Ananthanayaki, M.L.A., addressed to the Chief Minister stating, *inter-alia*, that the decision of the Supreme Court in C.A. No. 74/71 (Shri Varadaraja Pillai's case) has led to some hardships to the tenants and praying for amending Section 12 of the Madras City Tenants' Protection Act suitably. On this letter, the various endorsements are as follows :—
(The dates are important)

(i) "May be looked into.

(Sd.) M. Karunanidhi,
24—1—1972."

Secretary, Revenue

"Discussed with M(I). Please examine.

(Sd.) P. U. Shanmugham,
24—1—1972. "

On page 188 of the file (25/3) is another representation signed by the following M.L.As:—

- (i) Thirumathi T. N. Ananthanayaki, M.L.A.
- (ii) Shri O. N. Sundaram, M.L.A. (then Congress—O)
- (iii) Shri K. P. Gopal, M.L.A. (then Congress—O)
- (iv) Shri J. James, M.L.A. (then Congress—O)
- (v) Shri N. Dennis, then M.L.A. (Congress—O).

The following endorsement made by Shri S. Madhavan, Minister for Law appears on this :—

"This petition is presented to me today."

(Sd.) S. Madhavan,
24—1—72."

Copies of the petitions received from Shri Varadaraja Pillai, and through Sriramulu, and letter, dated 1st November 1971 received from Shri Vezhavendan, were all forwarded by the Revenue Department to the Commissioner for Land Revenue, Board of Revenue, Madras, with Revenue Secretary's D.O. letter dated 5th November 1971, for examination and report. The opinion of the Board, dated 16th November 1971, sent by Shri P. K. Nambiar, I.A.S., Member, Board of Revenue is at pages 139-140 of the file. The Board had, *inter alia*, opined:—

"In view of the present trend to confer greater benefits on tenants, it may be desirable to examine whether Section 12 cannot be amended omitting this proviso.....The Board would support any such proposal....."

At the end, it was added :

"It may not be proper to consider the question of nullifying the effect of a judgment of the Supreme Court and confer any special privilege to the tenants whose cases have been decided against them."

The entire case (proposed Amendment of the Act) was examined by Senior Officers of the Revenue Department.

Shri V. Sundaram, then Deputy Secretary (now Collector, Tirunelveli District) wrote a detailed note dated 16th November 1971, which is at pages 3-15 of the Note file. He opined:—

"There is no case for deleting the proviso under Section 12".

and added :—

"In my view the object of the Statute is not to help the tenants to wriggle themselves out of their contractual obligations specified in a Registered Lease Deed so long as the lease deed by itself does not militate against its spirit and purpose of the Act....."

The Additional Secretary, Shri B. Vijayaraghavan, agreed with the Deputy Secretary that "there is not good enough case" to amend the Act by deleting the proviso to Section 12 of the Act. The Secretary, too, agreed with the above noting vide page 16 of the Note file.

Thereafter, the file was sent to the Joint Secretary, Law Department, for advice which is to be found at pages 17—22 of the Note file. The Law Department, *inter alia*, wrote in their report as under :—

“The question to be decided is whether, as a policy the benefits given by the Act should apply even in the case where stipulation made by a tenant in writing registered, relate to the erection of building. If it is considered that even in those cases the benefits of the Act should apply then, the proper course will be to delete the latter part of Section 12, i.e., the proviso. On the other hand if it is considered that if a tenant knowingly enters into a certain contract, as regards erection of building then he should be bound by the terms of the contract and should not seek protection under the Act, then, Section 12 can remain as it is.”

The Law Department added that,—

“It was within the competence of the State Legislature to amend Section 12 by deleting the proviso with retrospective effect.”

The file was then circulated and, on 24th January 1972, Shri P.U. Shanmugham, Minister for Food and Revenue wrote this note as under, (*vide* pages 29—31 of the Note file) :—

“Discussed.

In all legislations seeking to protect the interests of the tenants, specific statutory provisions have been made to override the terms of any contract which are inconsistent with or repugnant to the provisions of the Act itself, *vide*, S. 13 of the Tamil Nadu Cultivating Tenants (Payment of Fair Rent) Act, 1956 S. 3 of the Tamil Nadu Cultivating Tenants Protection Act, 1955 and S. 3 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1951.

Even in the City Tenants Protection Act, S. 12 provides that nothing in any contract made by a tenant shall take away, or limit his rights under this Act. But there is a proviso only in this Act in S. 12.

The interpretation of this proviso has been in such a way to protect the rights of the tenants. The Tamil Nadu High Court and the Supreme Court have interpreted the proviso in the following words :—

“The stipulations not protected under Section 12 are only those in writing registered and relate to erection of building such as restrictions about the size and nature of the buildings constructed, the building materials to be used therein and the purpose for which the building materials to be used therein and the purpose for which the building is to be utilised. It is not possible to give wider meaning as to the expression ‘the erection of buildings’ that the stipulation as to the erection of the buildings would include to stipulations to remove buildings on the termination of the lease”.

But the decision of the Supreme Court in the year 1970 is a deliberate departure from their own decision and this is followed in the year 1971 also. This was to the prejudice of the tenants who would have invested large amounts in the superstructure.

In these circumstance, it is better to avoid different interpretations to this proviso by deleting this proviso. This will be in agreement with the similar legislations as referred earlier.

It cannot be said that this amendment seriously makes an inroad into the rights of the landlords for it is open to them to pay compensation to the tenant under Section 3 for the buildings, or to receive compensation from the tenant for the land under Section 9.

Hence the proposal to delete the proviso to Section 12 may be approved. The Bill may be introduced in the Assembly during the present Session in anticipation of the concurrence of the Government of India.”

(Sd) P. U. Shanmugham,
24—1—72
M(F & R).”

The Minister for Industries and Law (Shri S. Madhavan) and the Chief Minister (Sri M. Karunanidhi) agreed with the above proposal of the Minister for Food & Revenue on the same date i.e. 24th January 1972, by appending their signature under this Note.

In compliance with the above order, the Amending Bill was drafted and introduced in the State Legislature on 31st January 1972 and was passed by both Houses on 1st February 1972. By Section 3 of the Amending Act, the proviso to Section 12 was deleted with retrospective effect i.e., from the date of the commencement of the Principal Act. Section 4 of the Amending Act provided that any stipulation in any contract as to the erection of the building will be void to the extent to which such stipulation took away, or limited, the rights of the tenants under the Principal Act.

Thus, this clause altered the basis of the law on which the decision of the Supreme Court was based in the case of *Varadaraja Pillai vs. Haridas Giridhar Das* (Reported in A.I.R.1971 S.C. 2366).

However, Section 5 of the Amending Act provided that the closed transactions will not be reopened.

After the Bill had been rushed through in both Houses on 1st February 1972, on the following day, i.e. 2nd February 1972, a letter was addressed to the Secretary to the Government of India, Ministry of Home Affairs by the Law Department, Government of Tamil Nadu, forwarding copies of the Bills as passed by the State Legislature. The Government of India was requested to obtain the assent of the President to the Bill well in advance, in any case before 10th February 1972, adding— "the benefit conferred by the proposed measure will not be available to the tenants if the landlords have taken possession of the land and building". The Government of India was further requested to convey the fact of the assent of the President by telegram (*vide* copy of the letter at pages 252—254 of the files).

The assent of the President of India was given on 9th February 1972 (*vide* page 43 of the note file).

SECOND AMENDMENT.

The second Amending Act was passed in 1973 and its relevant office file is G.O.Ms.No.5058 Revenue (dated 18th August 1972). At pages 1 to 11 of this file we find identical petitions, in English, dated 19th March 1973, from Shri K.T.K. Thangamani, then M.L.A., (C.P.I.) and, dated 24th March 1971, from Shrimathi T.N. Ananthanayaki, M.L.A. (Congress-O), respectively, both requesting for further amendment of the Act to ensure the tenants' protection intended under the Act of 1972. Similar petitions in Tamil were received from Shri S. Thevar, the M.L.A. Amending (Congress-O), Shri K.K. Bomman, M.L.A. (Swatantra) and Shri C.V. Velappan, then M.L.A. (A.D.M.K.), dated 29th March 1973.

All these petitions were sent to the Law Department on 29th March 1973, *vide* note by the Joint Secretary, Shri S. Vadivelu on the Note file pages 1—4.

The subject of further amendment was discussed with him, in the presence of Additional Secretary, Revenue, by the Minister for Industries and Law. The judgment of the Madras High Court Division Bench in *Haridas Giridhar Das vs. Varadaraja Pillai* (Application No. 437, etc. of 1973—C.S. No. 128 of 1964 on the file of the High Court, Madras) came under discussion. In view of this judgment, it was considered that unless the Principal Act is further amended, the purpose for which the Tamil Nadu Act of 1972 was passed, will not be fully achieved. A draft Bill for the purpose was accordingly prepared and circulated for approval. It was approved by the Minister for Food and Revenue, *vide* his endorsement, dated 3rd March 1973 at page 4 of the Note file.

The file was then marked to Minister for Industries and Law who noted as under on 31st March 1973 :—

"The Advocate-General may be consulted since the case is pending before the Supreme Court and the point of *mala fide* has been raised".

The Advocate-General stated that the Bill is valid and constitutional and that no *mala fide* can be attributed to the Legislature. This noting was seen by the Minister for Industries and Law, the Minister for Food and Revenue and the Chief Minister on 2nd April 1973.

Accordingly, the Madras City Tenants' Protection (Amendment) Bill, 1973, was drafted for introduction in the Legislative Assembly on 3rd April 1973. A Telex message was sent to the Government of India stating that 'the Bill is being introduced in the Legislature on 3rd April 1973, in anticipation of the concurrence of the Government of India'. Ultimately, the Bill was introduced on 5th April 1973 and passed the same day. The Minister for Food and Revenue had fully approved the procedure adopted by the office, viz. introducing the Bill in anticipation of the concurrence of the Government of India, *vide* his endorsement, dated 5th April 1973 on page 9 of the Note file.

The President's assent to this Bill was, however, accorded on 28th July 1973.

Shri R. Pasupathy, Secretary to Government, Transport Department, Government of Tamil Nadu, in his affidavit filed before this Commission, has deposed that he was working as Secretary to Government, Revenue Department from 12th April 1971 to 24th February 1973. On 1st November 1971, Shri K. Vezhavendan who was an M.L.A. belonging to D.M.K. Party, spoke to him and made a representation that quite a lot of persons were affected by the aforesaid Supreme Court Judgment and had urged that immediate action might be taken on these representations. He has further deposed that, even after the Board of Revenue and the Law Department had submitted their opinions, when the case came back to the Revenue Department, the views of the Revenue Department (under the signatures of the Deputy Secretary and Secretary, Revenue) were reiterated in a note, dated 16th December 1971 as under :

"This Department, for the reasons stated on pages 13-14 ante, has taken the view that on merits, there is no case for deleting the proviso to section 12 of the Madras City Tenants, Protection Act. For orders."

With regard to the following order, dated 19th December 1971, of the then Minister for Food and Revenue (Shri P. U. Shanmugham) on the petition of *Varadaraja Pillai*,

"Secretary to discuss"

Shri Pasupathy in his affidavit has stated as under :—

"I state that on the petition presented to Thiru P.U. Shanmugham, the then Minister for Food and Revenue on 11th December 1971 by Thiru K. Vezhavendan and also on a petition presented to the then Chief Minister on 13th December 1971, the then Minister for Food and Revenue had minuted directing me to speak to him.

From the notings at pages 141 and 153 C.F., it is seen that I had discussed the matter with the then Minister for Food and Revenue on 21st December 1971, i.e., after his minute, dated 19th December 1971 in the note file referred to above.

I state that Thirumathi T. N. Ananthanayaki, then M.L.A. had submitted a petition dated 22nd January 1972 to the then Chief Minister suggesting suitable amendment to Section 12 of the Act. This petition is available at page 186 C.F. The then Chief Minister had made the following endorsement under date 24th January 1972 on this petition:—

"M(I) May be looked into".

This petition also bears an endorsement, dated 24th January 1972 of then Minister for Food and Revenue (Thiru P. U. Shanmugham) as follows :—

"Secy. Revenue. Discussed with M(I). Please examine."

This petition with the endorsement referred to was received by me on 24th January 1972.

Thirumathi T. N. Ananthanayaki and some other Members of the Legislative Assembly, had also submitted another petition, requesting suitable amendment to Section 12 of the Madras City Tenants' Protection Act. This petition is available at page 188 C.F. and contains the following endorsement, dated 24th January 1972 of the then Minister for Industries (Thiru S. Madhavan)—
"Secy. Revenue.

This petition containing the above endorsement of the then Minister for Industries which bears the date seal of the Minister was received by me on 28th January 1972".

The Secretary has further deposed that as the concurrence of the Government of India was required for introducing this Bill in the State Legislature, and as there was no time to obtain the prior concurrence of the Government of India, a letter was addressed to the Government explaining the urgency for passing this enactment and requesting their concurrence as early as possible. Office copy of this letter is at pages 208-209.

Shri S. Vadivelu has deposed in his affidavit that he took over as Secretary, Law Department on 1st November 1974. Before that, he was working as Joint Secretary, Law Department from 13th October 1969 to 23rd July 1973. When the proposed legislation to amend the Act was taken up in 1971-72, the Law Department, *inter alia*, pointed out :—

“The proposed legislation came under the legislative competence of the State Legislature, but, *consultation with the Government of India, under Business Rule 43 (2) was necessary*. The Law department suggested that as the *orders in circulation* were to introduce the Bill in the State Legislature in anticipation of the concurrence of the Government of India, Revenue Department might take immediate steps to have the Bill introduced in the Legislature on 29th January 1972 itself, informing the Government of India of the position. This was in accordance with the proviso to Business Rule 43. The note recorded by me may be seen at pages 31 to 33 of the note file.

I state that the amending Bill was introduced in the Legislative Assembly on 31st January 1972 and was passed into Law on 1st February 1972 by both Houses of the Legislature. The same day (1st February 1972) the Bill was circulated to the Governor by the office for reserving the Bill for the consideration of the President under clause (2) of Article 254 of the Constitution through me, Secretary, Law, Minister for Industries and Law, Minister for Food and Revenue and Chief Minister. On the same day, all the above functionaries approved the proposal that the Bill may be reserved for consideration of the President. The draft letter to the Government of India for obtaining assent of the President was put up on 2nd February 1972 by the office. As the Minister for Industries and Law (Thiru S. Madhavan) desired that the assent of the President should be obtained within a week's time, I noted in the file that the Government of India may be asked to give the assent before 10th February 1972 indicating that it was necessary that the benefit conferred by the Act should not be denied to tenants who were facing eviction threats. The drafts of the letter to the Government of India, was suitably amended. The note and the draft were approved by the then Secretary. Under Secretariat Instruction 31(2) the Government of India should be allowed at least a week for examination of the Bill sent to them for obtaining the President's assent. Accordingly, the letter No. 2663/72, dated 2nd February 1972 was sent to the Government of India for obtaining the assent of the President wherein it was stated as follows :

“I am therefore to request that the Government of India would be so good as to obtain the assent of the President and to return two authentic copies of the Bill to this department with the assent of the President signified thereon well in advance, in any case before 10th February 1972, as the benefit conferred by the proposed measure will not be available to tenants, if the landlords have taken possession of the land and building.”

“I further state that Thiru S. Rajaraman, then Deputy Secretary to Government, Law Department, was deputed to New Delhi in February 1972 for obtaining the assent of the President of India to the Madras City Tenants' Protection (Amendment) Bill, 1972, as per G.O. Rt. No. 27, Law, dated 2nd February 1972. The file was circulated by the then Secretary to Government, Law Department, Thiru C. Balasubramaniam to the Minister for Industries and Law after issue of the draft order.”

There is an entry in pencil in the margin to the following effect.

“M(I) has orally ordered to proceed to New Delhi on 2nd February 1972.

“The then Secretary Thiru C. Balasubramaniam had signed the note on 1st February 1972 and the Minister who saw the file after issue of the order had signed it on 9th February 1972. The assent of the President was given on 9th February 1972.”

S. Vadivelu, now Secretary, Law Department, has deposed in para 10 of his affidavit as under with regard to the second amendment made in 1973 :

“I further state that I have recorded at page 1 of the Note file of G.O. Ms. No. 5058, Revenue, dated 18th August 1973 as follows :—

“M(I) mentioned on 29—3—1973 that representations had been received from the members of the Legislature, viz., Thiru K.T.K. Thangamani, Thirumathi T. N. Anantanayaki, Thiru Bomman and Thiru C. V. Velappan that the Madras City Tenants' Protection Act, 1921 as amended by Tamil Nadu Act 4 of 1972 did not confer benefit on persons where courts have passed decrees for possession or declaration or for similar relief on the ground that the proviso to section 12 of the Principal Act as it stood before the publication of Tamil Nadu Act 4 of 1972, disentitled them to the benefits under the Act and particularly in the light of the judgment of the Division Bench in *Haridas Giridhar Das V. Varadaraja Pillai* (Application No. 437, etc. of 1973 —C.S. No. 28 of 1964 on the file of the High Court, Madras). The Additional Secretary, Revenue was also Present.

"I state that as ordered by the Minister for Industries and Law, a draft Bill to further amend the Madras City Tenants' Protection Act, 1921 was prepared and put up by the Law Department. By clause 2 of the amending Bill, the definition of "tenant" was amended so as to include those persons against whom a decree for possession or for declaration or for similar relief had been passed by the Court on the ground that such person was not entitled to the rights under the Act by reason of the proviso to Section 12 as it stood before the publication of Tamil Nadu Act 4 of 1972. By clause 3, Section 9 of the Principal Act was amended so as to give to the tenant covered by sub-clause (ii) (b) of clause (4) of section 2, a right to file an application in the Court whether or not a suit for ejection has been instituted. This was to get over the objection that unless the landlord had filed a suit in ejectment no application for direction to sell would lie."

"I state that though the Bill fell within the competence of the State Legislature, concurrence of the Government of India under Business Rule 43 (2) was necessary. However, in view of the urgency, the Law Department suggested that the Bill might be introduced in the Legislature in anticipation of the concurrence of the Government of India. This was in accordance with the proviso to Business Rule 43."

Shri B. Vijayaraghavan, I.A.S., Officer on Special Duty, has stated in his affidavit that he had taken over as Joint Secretary in the Revenue Department on 8th May 1971 and was promoted as Additional Secretary in the same Department on 4th July 1971 where he continued till 27th August 1973.

After the receipt of some representations in March 1973 praying for further amendment of the Act, the Minister for Industries and Law (Shri S. Madhavan) discussed the matter with him and the Joint Secretary, Law Department. The Minister then directed the Joint Secretary, Law Department, in his presence, to draft a bill for further amending the Madras City Tenants' Protection Act, 1921 so as to confer the benefits under the Act specifically also on persons against whom a decree for possession, or for declaration, or for similar relief, had been passed by the Court on the ground that such person was not entitled to the rights under the Act by reason of the proviso to section 12, as it stood before the publication of Tamil Nadu Act 4 of 1972. The second amendment was accordingly passed on 5th April 1973.

Shri V. Sundaram, Collector, Tirunelveli District who had dealt with this case as Deputy Secretary, Revenue, has deposed in para 21 of his affidavit :

"Extra administrative and undue pressure was brought to bear upon me by the then Minister for Food and Revenue Shri P.U. Shanmugham and the Personal Assistant to the Minister, Shri Kuppuswamy".

He stated that after he had recorded the note to the effect that there was no case to amend the Tamil Nadu City Tenants' Protection Act, 1922, he was,

"Personally requested by both the Minister for Food and Revenue and his Personal Assistant to reconsider my view."

"The Minister for Food and Revenue Shri P.U. Shanmugham told me." The Deputy Secretary states that he had :

"Firmly indicated time and again to both the Minister and his Personal Assistant that as a Public servant I reserved the right to tender impartial and fearless advice to the Government which could always take a final decision in the matter."

About half a dozen M.L.As. of the then ruling Party had also contacted the Deputy Secretary twice or thrice, every day during the period from 20th November 1971 to 10th December 1971, with a view to pressurise him to change his views. He distinctly remembers that Shri Vezhavendan, a prominent leader of the Ruling Party leading a deputation of M.L.As. in order to persuade him to put up a favourable note. After his firm refusal to accede to the request of the M.L.As., the Deputy Secretary adds, the Minister for Food and Revenue (Shri P. U. Shanmugham):

"Called me to his room for the second time and expressed his dissatisfaction that I was not prepared to change my mind in the matter. Even then, I declined the suggestion of the Minister for Food & Revenue."

Shri C. Kuppuswamy, who was working as Personal Assistant to the Minister for Food and Revenue from February 1969 to January 1976, has filed an affidavit before this Commission and had also made a voluntary statement before the Deputy Superintendent of Police, C.B.I., Madras,

nominated under Section 5-A of the Act. In his affidavit, Shri Kuppuswamy has deposed that after Shri V. Sundaram had recorded a note against the proposed amendment,

"The Minister for Food and Revenue (Shri P.U. Shanmugham) directed me to meet Shri Sundaram and request him to reconsider his view and put up a revised note for amending the Madras City Tenants' Protection Act. I conveyed the direction of the Minister to Shri Sundaram".

When introducing the Amendment Bill of 1972, the Minister for Food and Revenue (Shri P.U. Shanmugham) sent a letter to the Secretary, Tamil Nadu Legislative Assembly on 29th July 1972 stating :

"In view of the need for introducing the Bill at present meeting of the Legislature, the Speaker may kindly be moved to waive under Rule 138 of the Assembly Rules, the time limit required under the Rules."

(Vide pages 204 and 230 of File No. 686.)

(ii) On 31st January 1972, the following telegram was sent to the Secretary to the Government of India, Ministry of Home Affairs as under :

"The Madras City Tenants Protection Act (Amendment) Bill, 1972 is being introduced in the Tamil Nadu Legislature on 31st January 1972 in anticipation of the concurrence of the Government of India (.) Request concurrence (.) Letter follows."

In the letter which followed this telegram, in paragraph 3 it was stated as under :

"The meeting of the State Legislative Assembly had already begun on 22nd January 1972. The Session is expected to last till 1st February 1972 only. As the proposed legislation is an extremely urgent measure, the Government are introducing the bill in the State Legislature in anticipation of the concurrence of the Government of India for the same."

Similar letter, as the one sent to the Tamil Nadu Legislative Assembly, was also sent to the Secretary, Tamil Nadu Legislative Council Department, by the Minister for Food and Revenue on 1st February 1972, requesting him to waive the requirement of the time limit under Rule 128 of the Legislative Council Rules.

After the amending Bill had been passed on 1st February 1972, pursuant to the orders in G.O.R.T. No. 72, Shri S. Rajaram who was working as Deputy Secretary to the Government, of Tamil Nadu in the Law Department, was directed to leave for Delhi on 2nd February 1972, by air, in order to expedite and get the assent of the President of India. He "piloted" the bill in the Government of India and after obtaining the assent, flew back to Madras on 9th February 1972.

Shri C. Balasubramaniam who was working as Secretary, Law Department from September 1971 to October 1974, stated in his affidavit that the Minister for Industries and Law, Shri S. Madhavan, had on 1st February 1972, instructed him orally to depute Shri Rajaraman to go to Delhi for getting the President's assent. Accordingly, he had made a note in pencil in the margin of page 3 as follows :

"M(I) has orally ordered to proceed to New Delhi "".

(Sd.) _____
2-2-1972. "

He made the above noting in the margin of the file to make it clear to everyone, who had to sign, that it was on the instructions of the Minister that the Deputy Secretary was being sent to Delhi.

C. T. Senthilnathan, a partner of Kamadhenu Theatre, Madras has filed an affidavit stating, *inter alia*, that in October 1971, Shri Nagamiah, a close friend of late Shri Varadaraja Pillai and his friend, Basheer Ahmed, met him and told him that there was a litigation regarding Globe Theatre land, as it was decreed by the Supreme Court against Varadaraja Pillai and that, at the instance of Varadaraja Pillai, they were collecting signatures on petitions seeking to amend the Madras City Tenants' Protection Act for being submitted to the Ministers. He signed one such petition and handed over the same to Nagamiah.

C. Rajan has stated in his affidavit that he knew Basheer Ahmed who had approached him for signing a petition for the amendment of the Madras City Tenants' Protection Act, as litigation was going on between the proprietor of Globe Theatre and the owner of the land. He stated that he signed a petition to oblige his friend, although the facts mentioned therein were not applicable to him.

V. Krishnaswamy, a partner of Messrs Ramakrishnan & Co., who are the Lessees of Chitra Theatre, has deposed in his affidavit that the land on which the theatre is constructed belonged to Shri W. S. Seetharaman and Brothers, Madras. He was paying a rent of Rs. 3,500 per month for the theatre. Later, when the lease had expired, they entered into a compromise in 1971 and they agreed to pay Rs.7,000 per month and the lease was renewed for a further period of 12 years. He was approached by Nagamiah, a film broker, and at his request signed a cyclostyled petition proposed to be submitted to Government for amending the Act. Nagamiah had told him that they were acting on behalf of Varadaraja Pillai. Since the witness was not concerned with the amendment of the Act, he declined to sign the petition.

Shri K. Vezhavendan, Advocate, a former M.L.A., Madras, has filed an affidavit stating that he was engaged as a Lawyer by Varadaraja Pillai, Proprietor of Globe Theatre in respect of a petition filed before the Government. He filed his Vakalat in this matter. However, in his statement before the investigating officer under Section 5-A Shri Vezhavendan had stated :

“Sometime in September 1971, I recollect Shri Varadaraja Pillai, Proprietor, Globe Theatre, Madras met me at my residence along with Snri Nagamiah and Shri Basheer and wanted me to submit a petition along with Vakalat to the Law Minister (Shri S. Madhavan) on behalf of Shri Varadaraja Pillai for getting the Tamil Nadu City Tenants, Protection Act amended. Shri Varadaraja Pillai told me that he was a lessee of the land on which the Globe Talkies building is constructed and according to the decision of the Supreme Court in the appeal filed by the lessors he had to vacate the land and building within a period of 6 months. They also told me that on account of the Supreme Court decision, several other tenants were also affected.”

Dr. H. V. Hande has filed an affidavit on 4th November 1976 before this Commission. He has stated that he was a Member of the Tamil Nadu Legislative Assembly from 1967 to 1971 and from 1972 to 31st January 1976, when the Assembly was dissolved. He deposed that towards the end of January 1971, Bill for amending the Madras City Tenants' Protection Act was introduced in the Tamil Nadu Legislative Assembly by the then Minister for Food and Revenue Shri P. U. Shanmugham. Normally, a copy of the draft Bill would be sent to all the members at least 3 days prior to the date on which the Bill is introduced in the Assembly. However the copy of the aforesaid amending Bill was sent to the Members *only on the day previous to the day on which it was introduced in the Assembly.*

Shri K. T. K. Thangamani, leader of the Communist Party group in the Assembly, and he, raised an objection on the floor of the House and requested that the Bill might be taken up for discussion *a little later* enabling the Members to study the Bill. But the Government brushed aside their objections and took up the Bill for consideration straightaway. However, he had information that the amending Bill was brought by the Government with the object of helping a particular lessee, by name Shri Varadaraja Pillai of Globe Theatres. Therefore, during his speech on the Bill, in the Assembly he pointed out that certain theatre-owners would be the beneficiaries under this Bill. At this point, there was a demand from the floor of the House, that he should mention the name of the person concerned. He then disclosed the name of Varadaraja Pillai, the beneficiary, and that the Bill was brought for helping him. He added that he was aware of the real purpose of the amending Bill, but he supported the Bill along with other Opposition Members, because, he felt that, it might prove beneficial to some poor tenants, also. This peculiar aspect, namely, that the Opposition parties would not be able to oppose the Bill had also been anticipated by the Government and Shri Varadaraja Pillai, who had, earlier, approached a few of the Opposition Members for support, for this measure.

Shrimathi T.N. Ananthanayaki, M.L.A., in her affidavit before the Commission, has stated that she had submitted a letter, dated 22nd January 1972, to the Chief Minister, Government of Tamil Nadu, requesting that the Madras City Tenants, Protection Act might be amended, as the decision of the Supreme Court in V.A. No. 74 of 1971 had resulted in some hardships to the tenants. This letter was submitted by her to the Chief Minister, *as it was represented to her by Varadaraja Pillai's son.* Thambi, that the the Act, as it stood then, was against the interests of the tenants in general. Varadaraja Pillai and his brother-in-law, Sivagnanam Pillai of Trichy, were her clients since 1957 and they were also her family friends. Thambi requested her to put in a word to some of the other Opposition M.L.As including Shri K. P. Gopal and Shri R. Ponnappa Nadar. A Joint representation signed by 7 M.L.As, including herself, was also submitted to the Government on 24th January 1972 requesting amendment of the Madras City Tenants, Protection Act. She supported the amending Bill in the Legislative Assembly. The bill was passed in the Assembly in the first week of February, 1972.

Again in March, 1973, she submitted another to the Government requesting further amendment of the Act as it was represented to her by Varadaraja Pillai that the earlier amendment of 1972 had not fully protected the interests of the tenants. She had also received oral representations in this regard from some other affected tenants.

Shri O. N. Sundaram, M.L.A., then Congress (O), has stated in his affidavit, dated 31st October 1976, that, on 22nd November 1972, while he was staying in the old hostel of M.L.As' in Madras, Shrimathi T. N. Ananthanayaki, M.L.A. and Deputy Leader of the Congress Legislative Party met him along with Shri Sivaramasubramaniam *alias* Thambi and his uncle, Shri M. Sivagnanam Pillai, Proprietor of Plaza Theatre, Trichy and gave him a Memorandum for his signature. Shri Sivagnanam Pillai and Shri Sivaramasubramaniam represented to him that, consequent on the Judgment of the Supreme Court, a number of poor and middle class tenants were affected and in order to safeguard the interests of the poor tenants an amendment was necessary to the Madras City Tenants' Protection Act. The said Memorandum given to him for signature had already been signed by Shri N. Dennis, M.L.A., and Shrimathi Ananthanayaki, M.L.A. He has further stated that he went through the Memorandum and believed that the amendment would protect the interests of the poor tenants and therefore he subscribed his signature to the Memorandum. After his signature, the Memorandum was handed back to Shrimathi T.N. Ananthanayaki who wanted to get the signatures of Sarva Shri K.P. Gopal and James, M.L.As. The Madras City Tenants' Protection Act was amended by passing an amending bill. Later Shri M. G. Ramachandran, M.L.A., raised the matter in the Tamil Nadu Legislative Assembly and he came to know that his signature had been obtained in the Memorandum by misrepresentation of facts.

Shri K. P. Gopal, who was M.L.A. from 1971 to February 1976, has stated that he had signed a Memorandum, dated 22nd January 1972, submitted to the Government of Tamil Nadu seeking amendment of the Madras City Tenants' Protection Act, as the judgment of the Supreme Court in C.A. 74 of 1971 was against the interest of the tenants. Some other M.L.As., belonging to the opposition parties, had also signed this Memorandum. On 22nd January 1972 while he was sitting in the lobby of the Legislative Assembly, Shrimathi T.N. Ananthanayaki, Deputy Leader of his party met him along with another gentleman who was introduced to him as the son of Varadaraja Pillai of Globe Talkies, Madras. Shrimathi T. N. Ananthanayaki told the witness that a recent judgment of the Supreme Court in Varadaraja Pillai's case was against the interests of the tenants in general and she requested him to sign the Memorandum. He went through the Memorandum and found that some senior members of the Party, like Shri R. Ponnappa Nadar and Shrimathi T. N. Ananthanayaki had signed the Memorandum. Hence he subscribed his signature in the *bona fide* belief that the amendment would be beneficial to the tenants in general."

Shri K. H. Bomman, M.L.A., has stated that he had signed a Memorandum, along with some other M.L.As., submitted to the Government of Tamil Nadu in January 1972, requesting amendment of the Madras City Tenants' Protection Act, on the ground that the judgment of the Supreme Court in C.A. 74 of 1974 was against the interests of the tenants. He signed this petition at the request of Shrimathi T. N. Ananthanayaki, M.L.A. who met him in the lobby of the Legislative Assembly on 22nd January 1972, along with another person, who was introduced to him as *Shri Thambi, son of Shri Varadaraja Pillai of Globe Talkies, Madras.*

Shrimathi T. N. Ananthanayaki told him that a recent judgment of the Supreme Court was detrimental to the interests of the tenants and the proposed amendment was intended to remove certain defects in the principal Act and confer better protection on the tenants. He signed this Memorandum in the belief that the proposed amendment would be beneficial to the tenants in general.

Again in March 1973, he had submitted another representation to the Secretary, Law Department, Government of Tamil Nadu stating that the amendment to the Madras City Tenants' Protection Act made in 1972 was not sufficient to give full protection to the poor tenants and requesting further amendment to plug the loopholes. This representation was also signed by him as requested by Shrimathi T.N. Ananthanayaki who met him in the Legislative Assembly lobby along with two others, one of whom was introduced to him as *Shri Varadaraja Pillai of Globe Talkies.* The typed representation was brought to him by Shrimathi T.N. Ananthanayaki, M.L.A. and she signed it in the *bona fide* belief that proposed amendment was necessary to protect the interests of the tenants.

Shri K. T. K. Thangamani, M.L.A. till January 1976 and was leader of the Communist Group has stated that when an amendment to the Madras City Tenants' Protection Act was introduced in the Tamil Nadu Legislative Assembly on 1st February 1972, he raised a point of order under Rule 95 as the 5 days, notice required to be given under the rules had not been given. He raised this point because there was a tendency on the part of the Government to rush through the important legislative measure, without observing the rules of procedure, thus denying sufficient time to the members for preparation. The leaders of the Congress (O) and Swantantra Party representing the Opposition, also, supported him. Almost all the leaders, including himself, supported the amendment as it appeared to be a measure intended to protect the interests of the poor tenants. Some members wanted a distinction to be made between poor tenants and rich lessees. The

M.L.As. were not given sufficient notice about the intention of the Government to introduce the Bill in the Assembly. In fact, the opposition parties were taken by surprise when the Bill was introduced. Nevertheless, he supported the Bill which was passed by the Assembly.

Shri M. Gopal son of Shri K. M. Muthuswamy Chettiar, in his affidavit has stated that he knew late Varadaraja Pillai, Proprietor of Globe Theatre, Madras, since 1956, as the deponent was doing film distribution business. In the middle of 1971, he entered into a screening contract with Varadaraja Pillai and hired his Globe Theatre on contract basis for a period of 200 weeks, on a weekly fixed payment of Rs. 5,000. Varadaraja Pillai informed him soon thereafter, that he had lost his case in the Supreme Court about the lease of the land, and told him that he had submitted a representation to the Government requesting for suitable amendment in the Madras City Tenants' Protection Act. Varadaraja Pillai asked the witness if he was acquainted with any Minister. Witness consulted his Film-Agent, Shri Dasaratharaman, who suggested that Shri Maran then M.P., (nephew of Shri Karunanidhi.) would be able to help, and the witness offered to take Varadaraja Pillai to Maran's house.

The deponent met Maran on the following day, and made a representation on behalf of Varadaraja Pillai, seeking Maran's help in getting Madras City Tenants' Protection Act amended (for which Varadaraja Pillai had already petitioned to the Government). On enquiry by Maran, the deponent told him that he was interested in the matter since he was the lessee of the cinema. Maran agreed to meet Varadaraja Pillai. The witness conveyed this to Varadaraja Pillai and learnt, later, that their "meeting was successful".

After some months, Varadaraja Pillai told the deponent that the Act had been amended and the latter could continue booking of pictures in the Theatre. About two years later, in March 1974, Sivaramasubramaniam, son of Varadaraja Pillai told the witness that his father had lost his case again in the Supreme Court which had ordered delivery of possession of the Theatre to the lessors within 14 days. So, Shri Sivaramasubramaniam asked the deponent to terminate the screening of pictures in the Theatre.

Shri V. Venkataraman Advocate, in his affidavit has stated that cyclostyled petitions signed by Sarva Shri M. Sreeramulu, G. Ramachandran, Ev. Venkatarama Naidu, T. Adiyappa Nadar, K. Kuppusamy Pillai, R. Janakiraman, E. Elumalai, Krishnaswamy Gramani, Smt. Muniammal and Smt. Krishnammal were drafted and collected by the deponent personally. These petitions were addressed to the Ministers of the Government of Tamil Nadu for amending the Madras City Tenants' Protection Act so as to benefit the poor tenants.

The signatories to the aforementioned petitions were past and present, clients of the deponent. They were tenants of small plots of vacant lands located in New Washermanpet area on which they had put up their own superstructures. Litigations were pending between these tenants and their landlords at the time. In the middle of October 1971, Basheer who owns a watch-repairing shop in Pondy Bazaar, T. Nagar, met the deponent, along with the former's friend, Nagamaiah. He was not acquainted with either of them. Probably, they had come to know that he was conducting some cases of tenants in the City Courts. Basheer and Nagamaiah told the deponent that they were acting on behalf of certain tenants in Kodambakkam who were interested in seeking amendment of Madras City Tenants' Protection Act, in favour of the tenants. Basheer gave him some stereotyped cyclostyled petitions and requested him to get the signatures of his clients on those petitions. The deponent told him that he would go through the petitions and asked him to meet him later, in the day, in the Bar Association Room. Basheer and Nagamaiah met him the same day in the Bar Association Room. In the meantime, he had gone through the petitions and as he was not satisfied with the draft, he prepared his own draft and gave it to Nagamaiah and asked him to get it cyclostyled. Accordingly, on the following day, Nagamaiah handed over a bunch of cyclostyled petitions to him. A day later, when he went to washermanpet on some other job, he got the signatures of some of his clients on the petitions. The signatures of some others were obtained by him in the Bar Association Room. Two or three days later he handed over the signed petitions to Basheer Ahmed.

The respondents' case may be summed up in the following words, extracted from Shri Karunanidhi's counter-affidavit:—

"It may be pertinent to mention here that legislators belonging to different political parties, including the ruling Congress, gave representations to bring this Amendment and, accordingly Act 4 of 1972 was passed. Then again in 1973, the members of the various political parties in the Assembly, including the Communist Party of India and the A. D. M. K. represented to bring the further Amendment to this Act, and, accordingly, Act, 24 of 1973 was passed. . . . Both the Amendments were passed with the best of intentions, with the support of all members of the Legislature and all the political parties."

Shri P. U. Shanmugam, in his counter affidavit, has said:—

“ Since responsible legislators drawn from different political parties had also given a Memorandum in addition to the various members of the public, after discussions with the Law Minister, I took the policy decision to accept the proposals for amendment, in view of the fact that it was intended to protect the tenants from being evicted in pursuance of the judgment. So as not to frustrate the object of the Amendment, I decided to introduce the Amendment during that session of the Assembly itself, which was to end on February, 1972. Thereafter, again, when this amendment did not turn out to be as beneficial to the tenants as contemplated, further amendment was sought by representations made by the legislators belonging to the opposition parties.”

I have heard the arguments of Shri V. P. Raman, Additional Solicitor - General, appearing on behalf of the Government of India, Shri N. T. Vanamamalai and G. Dasappan, Counsel for the State Government of Tamil Nadu, Shri N. C. Raghavaehari, Senior Advocate, and Shri C. Ponnaiyan and K. T. Palpandian, Advocates for the Memorialists.

The main contentions canvassed by Shri Raman are :

(1) In getting the amending Acts 4 of 1972 and 24 of 1973, passed post-haste the then Tamil Nadu Government was not motivated by any lofty concern for the tenants in general, but was driven by its anxiety to benefit only Varadaraja Pillai. The benefit, if any, accruing to the other tenants from this legislation was only incidental.

(2) The dates 31st January 1972 and 1st February 1972 on which the Amending Act 4 of 1972 was introduced and got passed respectively, by the State Legislature, and the anxiety with which the extraordinary steps were taken including the sending of a Deputy Secretary by air to Delhi to get the assent of the President forthwith, are tell-tale enough to show beyond doubt the ulterior intent of the State Government to benefit Varadaraja Pillai, because he had to vacate the possession by 17th February 1972. It was (speed) money which was working, as time was the essence of the whole thing.

(3) The landlords, petition, dated 9th December 1971, opposing the proposed amendment went unheard. The landlords were suffering a huge loss, in as much as they were being paid only Rs. 5,000 as annual rent, out of which they had to pay the Corporation Tax. On the other hand Varadaraja Pillai was earning a Weekly hire of Rs. 8,000 from the Globe Theatre; i.e., the owner was poor, while the tenant was a rich person.

(4) The justification for rushing through this legislation given by the Chief Minister and his colleagues in their reply sent to the Prime Minister in 1972, viz., that they had received petitions from a number of tenants, was without foundation because out of the petitions, only three fell in the category of new tenants, and out of them also, it was Varadaraja Pillai only, who was being actually benefitted by the new legislation. The three tenants in this category were—

- (i) Thiru Pachiappan,
- (ii) Thiru Srinivasan, and
- (iii) Thiru Varadaraja Pillai.

The case of No. (i) was under litigation when the definition of the “ tenant ” was amended by Act 24 of 1973. The tenancy of No. (ii) was to last till 1978. Thus, the case of Varadaraja Pillai was the only one to be covered by the amendment. Although 17 persons had signed the various petitions as tenants, in effect, only Varadaraja Pillai was affected.

(5) Shri Vezhavendan, Advocate, admits that when he was engaged by Varadaraja Pillai, the latter was accompanied by S/Shri Basheer Ahmed and Nagamaian, witnesses. It is strange however, that the Minister for Food and Revenue, Shri Shanmugham, does not remember having met Shri Vezhavendan, Advocate, in connection with the petitioner, Varadaraja Pillai.

(6) The legislation was rushed through in order to help Varadaraja Pillai, only with an oblique and corrupt motive. There is direct evidence rendered by Shri Sivarama subramaniam, s/o Varadaraja Pillai of the payment of Rs. 30,000 to the Chief Minister but since the son did not at that time, know that it was bribe money, he is not an accomplice and, therefore is not an unreliable witness.

(7) The second Amendment to the Act in 1973, introduced a fantastic definition of “tenant” which shows the motive or ulterior intent of the Government, in sponsoring and getting it enacted. It is incorrect to call it a socialistic legislation. The Second Amendment introduced in 1973 throws considerable light of the motive of introducing the first Amendment of 1972 and has to be taken into account by the Commission.

(8) As regards the quantum of proof required to prove a fact, before the Commission of Inquiry, Shri Raman submitted that it has to be different from what is required to prove a criminal case, against an accused in a Court of Law. The proceedings before the Commission are only of an inquisitorial nature and, therefore, the principle enunciated in Section 133 of the Evidence Act applies notwithstanding what is provided in Section 114, Illustration (b), Evidence Act.

Shri N. T. Vanamamalai argued that the *reason* which led to the amendment of 1972, the *time* when it was received, the *peculiar procedure* which was adopted, all go to show that it was for the benefit of Varadaraja Pillai. The legislation was undertaken, despite strong opposition by senior officers of the Revenue Department who had in their notings on the 'official files advised against the proposed amendment. It was argued that the amendment was not intended to help the poor as professed by the Ministry, but to help Varadaraja Pillai to retain under the cloak of law, property of the value of Rs. 25 lakhs, in defiance of the decree of the Supreme Court.

(1) The main contention of the Respondents, Sarva Shri Karunanidhi, P.U. Shanmugham and Madhavan, to justify the amendment of the Madras City Tenants' Protection Act by Act 4 of 1972 was that it had been done to alleviate the hardships that would be caused to the tenants owing to the ineffective protection granted by Section 12 of the Act, that the amendment was introduced in response to the demands from the tenants and Members of the Legislature belonging to different political parties and in order to bring the Madras Act into line with similar enactments of other States. They have denied that it was intended to help Varadaraja Pillai. The first main point that falls to be considered is :

Whether the Respondents, Shri Karunanidhi, the then Chief Minister, Shri P. U. Shanmugham, the then Revenue and Food Minister, and Shri Madhavan, the then Law Minister, of the State of Tamil Nadu, in moving, piloting, and getting passed the Madras City Tenants' Protection (Amendment) Bill IV of 1972 and the Madras City Tenants' Protection (Amendment) Bill of 1973 by the State Legislature, were actuated by the ulterior intent or motive to favour a particular individual, namely, Varadaraja Pillai, by enabling him to retain property contrary to the decree and order of the Supreme Court ?

In this connection, it is to be stated that Varadaraja Pillai had lost his case in the Supreme Court on 18th August 1971, *vide* the decision of the Supreme Court (reported in AIR 1971 SC 2366) proceeded on an application of the rule that it had earlier in 1970, enunciated in *Mylapore Hindu Permanent Fund* case reported in AIR 1970 SC 1683 (Vs. K. S. Subramaniam Iyer). Since by virtue of Article 141 of the Constitution, the law as interpreted and declared by the Supreme Court was the law of the land, the Government would be presumed to be aware of that decision. Indeed, Shri P. U. Shanmugham in his note, dated 24th January 1972, while proposing amendment of Section 12 of the Principal Act, expressly referred to the earlier Supreme Court decision, also. Despite such knowledge, the Respondents noticed the alleged hardships caused by the unamended Section 12, as interpreted by the Supreme Court, *only after the decision of Varadaraja Pillai's case in 1971*. The inference is obvious that no other tenant had been seriously affected and no other tenant had moved the Government for seeking an amendment, prior to Varadaraja Pillai's move.

(2) A decree for eviction had been passed by the Supreme Court against Varadaraja Pillai as per its judgment, dated 18th August 1971, and he was given six months' time expiring on 17th February 1972, to hand over the possession of Globe Theatre, etc. to the lessor. This building was valued at Rs. 25 lakhs and fetched huge weekly income from the exhibition of films. Therefore, Varadaraja Pillai had a strong motive to get the law amended and that, too, before the 17th February 1972, because he thought that to be the only way in which he could get the order of the Supreme Court nullified and retain possession of the property.

(3) According to the evidence on record, Varadaraja Pillai approached the D.M.K. lawyers, firstly, Thiru N. V. Somasundaram, and, then, Thiru K. Vezhavendan, former Minister and D.M.K. M.L.A., to get things done with their influence in the Ministry. The fact that cyclostyled petitions more or less in similar handwriting, all dated 22nd October 1971, were simultaneously received by the Government, was clear enough to indicate that they had been engineered by an interested party. It is in the evidence of Basheer Ahmed and Nagamaiah that they, at the instance of Varadaraja Pillai, approached various parties and procured signatures on these petitions.

(4) Shri V. Venkataraman, an Advocate of standing, has corroborated Basheer Ahmed and Nagamaiah, in as much as he has deposed that in the middle of October 1971, these two persons had approached him representing that they were acting on behalf of certain tenants in Kodambakkam who were interested in seeking amendment of the Madras City Tenants' Protection Act in their favour. Shri Venkataraman re-drafted the petition which Nagamaiah brought cyclostyled and on these petitions, Shri Venkataraman obtained the signatures of some of his clients. It is stated by him that the cyclostyled petitions signed by S/Shri M. Sreeramulu, G. Ramachandran,

E. Venkātarama Naidu, T. Adiyappa Nadar, K. Kuppuswamy Pillai, R. Janakiraman, E. Elumalai, Krishnaswamy Gramani, Srimathi Muniammal and Srimathi Krishnammal had been drafted and got signed by him, personally. This obviously connects the source of the petition with Varadaraja Pillai.

(5) Shri K. Vezhavendan, Advocate, M.L.A., stated in his affidavit that he was engaged as a lawyer in respect of a petition filed before the Government of Tamil Nadu by one Varadaraja Pillai, former lessee of Globe Theatre, Madras. In his statement under Section 5-A, which according to the witness was made by him voluntarily before the investigating officer, the witness mentioned that in September 1971, Varadaraja Pillai had met him with Basheer Ahmed and Nagamaiah and wanted the witness to present a petition with his "Vakalat" to the Law Minister for getting the Tamil Nadu Madras City Tenants' Protection Act amended. The witness agreed to present the petition and, accordingly, took Varadaraja Pillai to the Law Minister, Shri S. Madavan and presented the petition with his Vakalat to the latter. He remembered that Basheer Ahmed and Nagamaiah had also accompanied him to the Minister's residence. This clearly supports the version given by Nagamaiah and Basheer Ahmed before this Commission as to the part played by them in helping Varadaraja Pillai in his efforts to get the Act amended.

(6) The file shows that Shri Vezhavendan wrote three letters enclosing therewith copies of the petition of Varadaraja Pillai. The first of these letters was addressed to the Revenue Secretary to the Government. The second, dated 10th December 1971, was addressed to the Minister for Food and Revenue, requesting immediate action to amend Section 12 of the Act; and the third, dated 11th December 1971, was addressed to the Chief Minister requesting expeditious action to amend the Act. This extraordinary interest beyond the sphere of his usual professional work shown by Shri Vezhavendan, indicates that his services were, in fact, intended to exert influence over the Ministers to get the Act amended, *as desired by Varadaraja Pillai*.

(7) It is in the evidence of Shrimathi T. N. Ananthanayaki, Advocate that Varadaraja Pillai and his brother-in-law, Sivagnanam Pillai of Trichi were her clients since 1957, and also family friends. She was member of the Tamil Nadu Legislative Assembly from 1957 to 1967 and again from 1971 to 1976. On 22nd January 1972, she submitted a letter to the Chief Minister requesting that the Madras City Tenants' Protection Act might be amended as the decision of the Supreme Court in C.A. No. 74 of 1971 (in Varadaraja Pillai's case) has resulted in some hardships to the tenants. She added that on 24th January 1972, a joint representation signed by 7 M.L.As, including herself, was also submitted to the Government, requesting for amendment of the Act.

In her statement under Section 5-A, she had clarified that her letter to the Chief Minister submitted on 22nd January 1972, had been inspired by Varadaraja Pillai's son who had represented to her that the Act, as it stood then, was against the interests of the tenants.

Thus the source of her letter, as well as the joint representation of 7 M.L.As to the Chief Minister for getting the Act amended, can be clearly traced to Varadaraja Pillai.

(8) Dr. H.V. Harde, who was M.L.A from 1967 to 1971 and again from 1972 to January 1976, has deposed that in the end of January 1971, a bill for amending the Madras City Tenants' Protection Act was introduced in the Assembly by the then Minister for Food and Revenue Shri P.U. Shanmugam. A copy of the Amending Bill was sent to the members, only on the previous day, and he raised an objection on the floor of the House that the Bill might be taken up a little later, so that the members could study the same. Their objection was set aside and the Bill was taken up for consideration *straightaway*. Dr. Harde added that he had information that the amending Bill was brought with the object of helping a particular lessee, namely, Varadaraja Pillai, and, during his speech, he mentioned that a certain theatre owner would be the beneficiary under the Act. On a demand from the floor of the House, the witness had named that beneficiary as Varadaraja Pillai.

(9) It is in the evidence of Shri O.N. Sundaram, M.L.A., that on 22 November 1972, Smt. T.N. Ananthanayaki, M.L.A., met him along with Sivaamasubramaniam, son of Varadaraja Pillai and his uncle, M. Sivagnanam Pillai, Proprietor of Plaza Theatre, Trichi, and, at their behest, the witness signed a memorandum addressed to the Chief Minister for amendment of the Act. After signing, the witness returned that memorandum to Smt. T.N. Ananthanayaki, who was collecting more signatures on it. Shri Sundaram added that, later, he came to know that his signature had been obtained in the memorandum by misrepresentation of facts.

Shri Sundaram's evidence further confirms the conclusion that the signatures on the memorandum, were all the result of the machinations of one man, Varadaraja Pillai.

(10) Shri M. Gopal, who is the Managing Partner of Messrs. Jothi Pictures (Film Distributors) and Jothi Theatre, Tirupur, has deposed that Varadaraja Pillai of Globe Theatre had solicited the help of the witness in getting the Madras City Tenants' Protection Act amended, by the exercise of influence with the Ministers. Witness, accordingly, met Shri Maran, nephew of the Chief Minister, and requested him on behalf of Varadaraja Pillai for help in getting the Madras City Tenants' Protection Act amended. Shri M. Gopal's evidence cannot be lightly ignored. He had special interest in helping Varadaraja to retain possession of the Theatre. The witness has sworn that he was interested in the sought amendment, because he had entered into a contract with Varadaraja Pillai, hiring the theatre for a period of 200 weeks on a weekly fixed payment of Rs. 5,000. Maran agreed to meet Varadaraja Pillai. The witness later learnt from Varadaraja Pillai "that he had met Shri Maran and the meeting was successful". About three months' later, the deponent learnt that the Act had been amended, and Varadaraja Pillai told him that in view of this Amendment, the deponent could continue the booking of pictures in this theatre.

' The evidence of Shri Gopal directly connects Varadaraja Pillai with the Amendment of the Act which came through on 1st February 1972.

(11) Then, there is the affidavit of the lessor, Gopaldas Jagannathadas, deposing that Varadaraja Pillai and his agents had collected cyclostyled petitions from tenants of General Patters Road, etc. to get the Act amended. These petitions were only a cover to conceal the real intention of the Government which was to help Varadaraja Pillai in his litigation with the deponent.

(12) The evidence available from the Government files shows that three senior I.A.S. officers of the Revenue Department, namely, the Deputy Secretary, Shri V. Sundaram, Joint Secretary, Shri B. Vijayaraghavan, and the Secretary, Shri Pasupathy, who dealt with the various petitions/representations of the tenants, including those signed by Varadaraja Pillai, noted on the file that there was no case for deleting the proviso to Section 12 of the Madras City Tenants' Protection Act. The records show that the sound, unbiased views of these officers, were brushed aside with great celerity by the Food and Revenue Minister, Shri P.U. Shanmugham, the Law Minister, Shri S. Madhavan, and the Chief Minister, Shri M. Karunanidhi.

(13) Sri V. Sundaram in his affidavit has deposed that after he had recorded his Note on the file opposing the amendment, "extra administrative and undue pressure was brought to bear upon me by the then Minister for Food and Revenue Thiru P.U. Shanmugham". He was personally requested by both the Minister for Food and Revenue and his Personal Assistant Shri C. Kuppuswamy, to reconsider his views. About half a dozen M.L.As., including Shri Vezhavendan, met him in deputation in order to persuade him to put a favourable Note. After his firm refusal to accede to their request, the Minister expressed his dissatisfaction with him. V. Sundaram has added that "the amendments to the Act were totally uncalled for and, perhaps, were introduced mainly with a view to help an individual though it was put in the garb of a public legislation".

(14) Shri C. Kuppuswamy, who was working as Personal Assistant to Shri Shanmugham from February 1969 to January 1976, has deposed that on receipt of the file from the Revenue Department, wherein Shri V. Sundaram had written a note against the proposed amendment, the Minister directed him to meet Shri Sundaram and request him to reconsider his views and put up a revised note. The deponent conveyed the Minister's direction to Sundaram.

I have no good reason to disbelieve what S/Shri Sundaram and Kuppuswamy have deposed to in their affidavits.

A Minister can certainly disagree with the note of a Deputy Secretary, or any other Secretary to the Government, but if he goes out of the way to get the officer's objective opinion, changed and substituted by another, under undue influence, and personal pressure, it may be an index of an oblique motive operating in the mind of the Minister.

(15) The Revenue Minister wrote a detailed note on 24th January 1972 giving his reasons for the proposed amendment. This note was approved by the Chief Minister and the Law Minister on the same day. There is no mention in this note that any representation for the amendment of the Act had been received from M.L.As. If it were so, it would have found mention in this note. Therefore, the stand taken by the Respondents in their counter-affidavits, to the effect, that the Amendment was taken in hand because of the representation received from M.L.As, is an obvious after-thought.

It is noteworthy that although the endorsement of the Law Minister, Shri S. Madhavan, on this joint petition signed by the M.L.As., bears the date, 24th January 1972, the date-seal of the Minister was 28th January 1972 and this document was received by the Secretary, Revenue on 28th January 1972, as mentioned in the endorsement :

"Secretary, Revenue. This petition is presented to me today."

(16) The Amending Bill 4 of 1972 was undoubtedly rushed through with bewildering speed and the procedural rules and regulations of the Assembly and the Council which ensured some minimal time to the legislators for scrutiny, study and discussion of the Bills, were, despite protests from some of the members, waived because the last date, viz., 17th February 1972, by which Varadaraja Pillai was required to deliver possession under the order of the Supreme Court, was fast approaching, ever nearer, and nearer, which once crossed, would have perilously pushed Varadaraja Pillai beyond the ring of protection sought to be thrown around him by means of this Bill.

(17) On 29th January 1972, the Minister for Food and Revenue wrote under his own signature to the Secretary, Legislative Assembly giving notice under the Rule 88 of the Madras Legislative Assembly Rules, of the proposal to introduce the Madras City Tenants, Protection (Amendment) Bill, 1972 in the Legislative Assembly then in Session. It was stated in this letter that in view of the need for introducing the Bill in the Assembly, then in Session, the Speaker may be moved to waive under Rule 138 of the Assembly Rules, the time-limit required under this Rule (Office copy of the letter is at, page 204 of the file).

(18) A Telex (Express) was sent to the Secretary, Government of India, Ministry of Home Affairs, intimating the introduction of the Madras City Tenants' Protection (Amendment) Bill 1972 in the Assembly on 31st January 1972 "in anticipation of the concurrence of the Government of India". (Page 206 of the Government file).

(19) On 29th January 1972, a letter was sent to the Secretary, Government of India, Ministry of Home Affairs, informing them of the proposal to introduce a bill in the State Legislature then in session, and requesting to arrange to communicate the concurrence of the Government of India as early as possible. It was stated that "as the proposed legislation was an extremely urgent measure, the State Government were introducing the bill in the State Legislature in anticipation of the concurrence of the Government of India".

(20) On 1st February 1972, the Minister for Food and Revenue, under his signature wrote to the Secretary, Tamil Nadu Legislative Council, giving notice that the amending Bill may be taken up for consideration by the Council and requesting the Chairman of the Council to waive the requirement of the time-limit in view of the urgency for passing the bill (page 234 of the Government file).

(21) On 2nd February 1972, the State Law Department wrote a letter to the Secretary, Ministry of Home Affairs, Government of India, forwarding copies of the Madras City Tenants Protection (Amendment) Act 1972 for consideration of the President. In this, Government of India was requested to obtain the assent of the President, well in advance, in any case before 10th February 1972, and to intimate the fact of assent by a telegram. (Pages 252-254 of the Government file.)

(22) Shri S. Rajaraman, who was then Deputy Secretary in the Law Department has stated in his affidavit, that pursuant to State Government orders, he flew to Delhi on 2nd February 1972 to get the assent of the President to the Madras City Tenants' Protection (Amendment) Bill 1972 (L.A. Bill No. 1 of 1972). He was instructed by the Law Secretary to obtain the assent very expeditiously. He obtained the assent on 9th February 1972 and returned by air to Madras the same day.

(23) Shri C. Balasubramanian, who was Secretary to the State Government, Law Department, in 1972, has sworn that the Minister for Industries and Law had orally instructed him to depute Shri S. Rajaraman, Deputy Secretary, to go to Delhi for obtaining the assent of the President of India to the Madras City Tenants' Protection (Amendment) Bill, 1972.

(24) It appears that out of the 17 persons who had signed petitions seeking amendment of the Act, only three were in the category of the tenant to whom the proviso to Section 12 of the Principal Act could have application. They were: G. Pachiappan, K. S. Srinivasan, and Varadaraja Pillai. But G. Pachiappan's case was still pending in the City Civil Court, and, in the case of Shri K. S. Srinivasan, the lease was to expire only in 1978. Among the signatories to the petitions was one Thiru Krishnaswamy, a lessee of Chitra Talkies. As testified by Nagamaiah, this petitioner is not a person who could be benefitted by this amendment as he was the lessee of the building and not lessee of the land. Thus, actually, out of the 17 signatories to the petitions, Varadaraja Pillai was the only one who was affected adversely by the judgment of the Supreme Court in his case.

Regarding the Second Amendment of the Act in 1973.

The circumstances of the Second Amendment of 1973, are closely connected with and arise out of those of the earlier amendment of 1972, and, as such, an inquiry into this matter is fully covered by clause (c) of paragraph 2 of the Commission's terms of reference embodied in the Central Government Notification, dated 3rd February 1976.

After the Madras City Tenants' Protection Act had been amended on 1st February 1972 and the assent of the President received on 9th February 1972, Varadaraja Pillai on 14th February 1972, filed three petitions No. 437 to 439 of 1972 in C.S. No. 28 of 1964 against the lessors, praying *inter alia*, that they (lessors) be directed to sell the lands mentioned in his petition (Globe Theatre) to the applicant at the valuation to be fixed by the High Court. These petitions were dismissed by the High Court on 13th October 1972. The High Court held that "in view of the decree of the Supreme Court, the respondent-lessors are the owners of the superstructure with effect from 1st March 1964. On 14th February 1972, when these applications were filed, the applicant was not the owner of the superstructure and consequently, Application No. 437 of 1972 is not competent."

Against this order, Varadaraja Pillai appealed to the Supreme Court. He was granted conditional stay by the Supreme Court. On 10th January, 1973, it was ordered that the hearing of the appeal be expedited. It is after this, that Varadaraja Pillai started efforts seeking further amendment of the Act, in a manner which would cover his case. With that end in view he sought re-definition of the term 'Tenant' so as to include those tenant against whom courts had passed decrees for possession, or for similar relief on the ground that the proviso to Section 12 of the Principal Act, as it stood before the publication of the Tamil Nadu Act 4 of 1972, disentitled them to the benefits under the Act.

The Government file shows that two petitions, one dated 19th March 1973 signed by Shri K. T. K. Thangamani, M.L.A., and the other dated 24th March 1973, signed by Smt. T. N. Ananthanayaki, M.L.A., were received in March, 1973. Although these petitions did not mention the name of Varadaraja Pillai, or that he had lost his case in the Madras High Court after the amendment of the Act, the note, dated 21st March 1973 at page 13 of the file recorded by the Law Department, specifically mentions the case of Varadaraja Pillai, adding that the Madras High Court had held that the Amending Act did not apply to his case. This note clearly indicates that this amendment was also conceived and carried into effect solely to cover the case of Varadaraja Pillai.

The second Amendment of the Act in 1973 was initiated with the note, dated 30th March 1973, recorded by Shri S. Vadivelu, Joint Secretary, Law Department, as a result of discussion held with the Law Minister. The draft Bill was circulated with the file and Shri P. U. Shanmugham, Minister for Food and Revenue, saw it on 30th March 1973, and the Minister for Law Shri S. Madhavan, on 31st March 1973. The Law Minister added that the Advocate-General be consulted as the case was pending before the Supreme Court and the point of *mala fides* had been raised.

It will be interesting to note here, that the only relevant case then pending in the Supreme Court, was of Varadaraja Pillai, and none else, as mentioned in the note at page 1 of the Government file. The Advocate-General opined "that the Bill is valid, that it is open to the legislature to pass retrospective beneficial legislation and that no *mala fides* can be attributed to the legislature."

Thereafter, the Bill was introduced in the Assembly on 3rd April 1973, and the Government of India was informed, that the Bill was being introduced on 3rd April 1973, in anticipation of the concurrence of the Government of India. This noting was seen by the Minister for Revenue, Shri P. U. Shanmugham, on 5th April 1973.

It is manifest that the Second Amendment was also connected directly with Varadaraja Pillai who had failed to achieve his object by virtue of the first Amendment of the Act. From a bare perusal of this Bill introduced in 1973, it is evident that it was designed solely to protect the interests of Varadaraja Pillai, by nullifying the effect of the Supreme Courts' decree, dated 18th August 1971. The determinative, attendant circumstances and facts emerging from the unimpeachable official records, irresistibly lead to the conclusion that the Respondents, Shri Karunanidhi, the then Chief Minister, Shri P. U. Shanmugham, the then Food and Revenue Minister, and Shri S. Madhavan, the then Law Minister of Tamil Nadu, moving and getting passed the Madras City Tenants' Protection (Amendment) Act IV of 1972 and Madras City Tenants' Protection Amendment Act of 1973, by the Tamil Nadu Legislature were actuated with the oblique motive to favour a particular individual, namely Shri Varadaraja Pillai. Accordingly, I would answer the first question posed at the commencement of the discussion, in the affirmative.

This takes me to the next question :

Whether the motive operating on the mind of the Chief Minister, Shri Karunanidhi and his Cabinet colleagues Shri Shanmugham and Shri S. Madhavan, in moving, piloting and getting passed the aforesaid amending Bills of 1972 and 1973 in this extraordinary fashion with hurricane speed for benefitting Varadaraja Pillai, stemmed from the receipt of illegal gratifications from the latter ?

First, I take up the alleged payment of Rs. 30,000 in cash to the then Chief Minister, Shri Karunanidhi, by Varadaraja Pillai.

Sivaramasubramaniam (CW 25) has testified that his father was ill and was admitted to the Vijay Nursing Home, Royapuram, Madras for treatment, towards the end of November 1971. About two weeks thereafter, which means the middle of December 1971, his father asked the witness one evening to go to their house, take out from the safe Rs. 30,000 which he had kept in currency notes of denomination of Rs. 100 each, and hand over the same to the Chief Minister Shri Karunanidhi. Accordingly, the witness took out a cover from the safe in the house, containing Rs. 30,000 in currency notes, and delivered the same to Shri Karunanidhi at his house in Gopalapuram. The Chief Minister accepted the cover and said "seri" (all right). No other talk took place between the witness and the Chief Minister.

I have reproduced the substance of his statement earlier and need not reproduce the same again. It will suffice to say here that this is the only direct evidence of this alleged payment. During his oral examination before me, the witness tried to pose as if he did not know about the tainted nature of the mission he was performing on behalf of his father. But a reading together of his three statements, one made under Section 5-A, the other contained in his affidavit, and the third made before me, leaves no doubt that he was fully conscious of the role he was playing at the instance of his father. He had graduated in 1967 and thereafter has been assisting his father in business. Admittedly, he was fully aware of the litigation in regard to the Globe Theatre and the activities of his father in this connection. At his father's bidding he had taken petitions for signatures to Smt. Ananthanayaki, Shri O. N. Sundaram, M.L.As. If Nagamaiah is to be believed, Varadaraja Pillai, in the presence and hearing of the witness (Sivaramasubramaniam), told Nagamaiah in the Nursing Home that he had paid about a lakh of rupees as gratification to the Minister, Shri Shanmugham, and the Chief Minister, Shri Karunanidhi, for getting the Act amended. Sivaramasubramaniam in his deposition before the Commission admitted that Nagamaiah and Basheer Ahmed used to meet his father, often, in his presence. Still, the witness wants to have it believed, that he never participated in their talk, nor overheard the same. It is difficult to believe this version of the witness. The fact remains that to all intents and purposes, Sivaramasubramaniam was an accomplice through whom illegal gratification was being passed by his father to the Chief Minister. It will therefore be unsafe to accept his *ipse dixit*, without seeking sufficient assurance from independent sources.

Before I turn to the question of corroboration, I would deal with the evidence of Nagamaiah and Basheer Ahmed, also. I have set out the substance of their statements earlier and need not repeat the same. In short, the story propounded by these two witnesses, is, that the late Varadaraja Pillai took them in a taxi to the house of Shri P. U. Shanmugham, Food and Revenue Minister, Varadaraja Pillai went in to the house of the Minister while these witnesses waited outside in a taxi. After sometime, Varadaraja Pillai came out and all the three drove to the house of Varadaraja Pillai. There, Varadaraja Pillai told them that he had paid Rs. 40,000 to Shri P. U. Shanmugham for getting the Act amended.

The evidence of these two witnesses, no doubt, is admissible in accordance with the principle underlying section 32(3), Evidence Act, but it is far from being impeccable. Varadaraja Pillai was a wealthy man owning a car of his own. His son also, according to his deposition, owned a car. It was therefore rather unusual for Varadaraja Pillai to go in a taxi. The witnesses have stated that while taking them along with him for going to the house of Shri Shanmugham, Varadaraja Pillai did not tell them anything about his mission or the purpose for which they were being taken along with him by him. Moreover, the version of these witnesses to the effect, that in the presence and hearing of his son, in the Nursing Home, Varadaraja Pillai told them that he had to pay about a lakh of rupees to the Chief Minister, Shri Karunanidhi, and the Minister, Shri P. U. Shanmugham, for getting the Act amended, is not supported by Sivaramasubramaniam who was supposed to be the best informed person about such activities of his father.

It is true that these two witnesses, according to their evidence, did not know before hand that Varadaraja Pillai was taking them along with him to pay any money to Shri P. U. Shanmugham and, as such, cannot be dubbed as 'accomplices' having a guilty intention to commit or abet the crime of bribery. Nor is their story intrinsically improbable. Nevertheless, they are partisan witnesses. They were helping Varadaraja Pillai in his dubious efforts to get the Act amended. Apart from their own admissions, this fact has been spoken to both by Shri Vezhavendan, Advocate, M.L.A., and Shri Venkataraman, Advocate. In their affidavits these two Advocates have deposed that Nagamaiah and Basheer Ahmed had met them in connection with the litigation of Varadaraja Pillai and the latter's efforts to get the Act amended by making petitions and representations, etc., to the State Government. True, that these two witnesses had no enmity or motive to falsely implicate Shri Shanmugham, the then Minister for Food and Revenue. Even so, I cannot overlook the stark fact that their evidence has not been tested by cross-examination. Moreover, these witnesses were deposing from memory, to an event which happened more than six years before

their examination before the Commission. As a matter of caution, therefore, I would hesitate to accept the bald statements of these interested witnesses without looking for assurance from independent sources.

The stage is now set for considering the corroborative evidence, if any. So far as the procuring of signatures of various persons on the petitions/representations addressed to the Minister/ the Chief Minister by these witnesses at the instance of Varadaraja Pillai, are concerned, there is ample corroboration from independent evidence. Smt. Ananthanayaki, Shri O. N. Sundaram, M.L.A. and Shri Vezhavendan, Advocate, Shri Venkatraman, Advocate, among others, have confirmed the evidence of these witnesses with regard to the efforts made by them for getting the Act amended. The official records also, which have already been discussed above, confirm that part of their testimony.

But with regard to the payments of the gratifications by Varadaraja Pillai to Shri P.U. Shanmugham and Shri Karunanidhi, their evidence has not been corroborated to any material extent.

Learned Additional Solicitor-General contended that the very circumstance that in moving, piloting and getting the Bill No. 4 of 1972 and Bill No. 24 of 1973 passed the Tamil Nadu Government was actuated by the motive to benefit Varadaraja Pillai, is more than sufficient to lend credence to the evidence of the aforesaid three witnesses with regard to the payments made to Sri P.U. Shanmugham and the Chief Minister by Varadaraja Pillai. It is well settled that where a finding of guilt is to be recorded on circumstantial evidence, the circumstances should be of a conclusive tendency and make a net work so complete as not to leave any escape from the conclusion of guilt of the person accused. The circumstances should not be capable of explanation on any hypothesis save that of his guilt. In the case before me, while the circumstances established, including the nature of the amending legislation, its background, the reason which led to its enactment, the time when the Amending Bills were moved, the peculiar procedure adopted for rushing through the amendments and the anxiety to obtain the assent of the President before a particular date, all go to show that in moving and getting these amendments passed the Chief Minister, the Minister for Food and Revenue and the Law Minister were actuated with the oblique motive to benefit Varadaraja Pillai, they do not unerringly lead to the conclusion, as Shri Raman contends, that all this was necessarily done in consideration of the receipt of illegal gratification or "speed money" from Varadaraja Pillai.

M. G. Ramachandran, in his Memorandum has alleged that "Varadaraja Pillai is an old associate of Dravida Kazhagam for the past 30 years". It could be that in causing these amendments, the only oblique motive operating on the mind of the Chief Minister, Sri Karunanidhi and his cabinet colleagues was to favour a veteran member of their political Party. May be the receipt of gratification was an additional factor that weighed with them in getting these amendments passed with such celerity. But between "may be" and "must be" there is evidently a long distance to travel, the whole of which must be covered by cogent, convincing and reliable evidence. In short, the fact that these amendments were sponsored and effected by the, then Government of Tamil Nadu with the motive to benefit Varadaraja Pillai, is, by itself, not sufficient to give the interested evidence of the witnesses, Sivaramasubramaniam, Nagamaiah and Basheer Ahmed, the imprimatur of indubitability.

To sum up, while it has been fully proved that in moving, piloting and getting passed the amending Bill 4 of 1972 and amending Bill 24 of 1973, S/Shri Karunanidhi and P. U. Shanmugham and Madhavan were actuated with the oblique motive to benefit Varadaraja Pillai, the allegation with regard to the receipt of gratification by them for this purpose, is not absolutely free from the cob-webs of doubt. At best, the evidence on the record establishes a strong possibility, verging on probability, falling short of positive certainty, in favour of the allegation that the aforesaid amendments had been got enacted in consideration of the receipt of some gratification by S/Shri Karunanidhi and P. U. Shanmugham. While I do not find that the story of the payment of these gratifications propounded by the witnesses aforesaid, is false, I would, erring on the safe side as a matter of abundant caution, hold that it has not been established beyond all manner of doubt that the Respondents, Shri Karunanidhi and Shri Shanmugham had received any gratification from Varadaraja Pillai for causing these amendments of Madras City Tenants' Protection Act.

CHAPTER VI.

ALLEGATION No. 16.

MUD FOR OFFICERS AND MONEY FOR MINISTERS AGAINST SHRI M. KARUNANIDHI.

The allegation as contained in the Memorandum of Shri M.G. Ramachandran (Serial No. 16 of the Annexure to the Notification setting up the Commission) is as follows :—

“Mr. Cherian, Editor of Broadway Times, was blackmailing the District Collectors, for approval of his books for prescribing the same as School Text Books and was publishing malicious and scandalous stories against Officers who declined to comply with his request. Mr. T. A. Varghese, I.C.S., Ex-Chief Secretary and his son, Shri Antony, I.A.S., the then Collector of Thanjavur, were also subjected to malicious and false allegations that an import permit of a foreign car was tampered with at the instance of Mr. Varghese. At the written complaint of Mr. Varghese, I.C.S., the Government ordered for the prosecution of Mr. Cherian after approval by the then Education Secretary, Chief Secretary, Education Minister and the Chief Minister (Mr. Karunanidhi) and he was (Mr. Cherian) blacklisted for five years. This order was subsequently cancelled by the Chief Minister for obvious reasons and the close connections cleverly developed by Mr. Cherian with the Chief Minister's nephew Mr. Maran, M.P. and the said Mr. Cherian was the Election Agent of Mr. Maran M.P.

The Chief Minister, Mr. Karunanidhi, kept most of the corrupt officials in key posts so as to fill up his coffers. For the instance, Thiru P. K. Nambiar, I.A.S. of Manali Scandal and U.P. Potatoes Scandal (reference P.A.C. Report and Assembly Proceedings) was appointed in a key post as Land Revenue Commissioner, Board of Revenue, in charge of all District Collectors.

Thiru Pasupathy who was caught red-handed for burning Government records as Secretary, Board of Revenue and punished for the said offence, by stoppage of increments, was promoted and posted as Secretary, Revenue in charge of the Revenue Administration of the State which is the backbone of the entire State Administration.

One of the worst and corrupt officers, Thiru Vaidyalingam, the then Private Secretary of the Chief Minister, Mr. Karunanidhi, was promoted as I.A.S. Officer and placed as Deputy Secretary, Public Department, the most vital post in the Secretariat, next to Chief Secretary”.

The facts that emerge from the records including the affidavits, and the evidence collected by the Investigation Agency appointed by the Commission under s. 5A are as follows :

“Broadway Times” is a weekly edited and published by one Shri Mathew Cherian and printed in Minerva Press of Messrs. Thompson and Co. Private Ltd., Madras.

In the issue of “Broadway Times” dated 20th June, 1969, an item appeared on the front page under the caption. “Father and Son set their own norms of public conduct”. In this article, certain malicious and false allegations relating to the import of a foreign car by Shri T.V. Antony, I.A.S., the then Collector of Thanjavur were made. Certain defamatory statements had also been made against the father of Shri T.V. Antony, Shri T.A. Varghese I.C.S. (Retd), who had served as Chief Secretary to the State Government, and after retirement, had been re-employed as Vigilance Commissioner and Planning Adviser to the Government of Tamil Nadu.

On 27th June, 1969, Shri Varghese wrote to the then Chief Secretary, Shri C.A. Ramakrishnan (Sl. No. 4 of the list of documents filed by the State Government) alleging that Shri Mathew Cherian, through the columns of “Broadway Times” was indulging in blackmail of young officers, particularly those officers who were not prepared to extend Government patronage either to “Broadway Times” or to the publishing business in which Shri Cherian and his sons were interested. In the same letter, he had also explained how the transaction relating to the import of the Opel car into India by his son, Shri Antony, was a perfectly regular transaction, in which all the prescribed legal formalities, such as obtaining of import licence, obtaining Customs Clearance etc. were duly observed. Shri Varghese followed this up with another letter, dated 9th July, 1969 (Sl. No. 5 of the State Government file), to the then Chief Secretary, in which he had pointed out that this was not the first time that the “Broadway Times” had indulged in this form

of blackmail, and on earlier occasions it had made similar defamatory attacks on several other senior officers, such as, Shri K. Venkatesan, I.A.S., then Collector of Salem, Shri P.B. Krishna swamy, then Collector of Kanyakumari, Shri E.C. Prabhakar, I.A.S. then Director of Agriculture, and Shri T.N. Seshan, I.A.S., then Director of City Transport. Shri Varghese presumed that these officers were also attacked because they had not granted certain requests of the persons connected with the "Broadway Times".

These two letters of Shri Varghese were examined in the Public Department in consultation with the Law Department. The Law Department opined that in so far as the article related to Shri Antony, it could not be said to be defamatory, but the article, read as a whole, was certainly defamatory of Sri Varghese, the Vigilance Commissioner. Since allegations were made against Shri Varghese in respect of his conduct in the discharge of his public functions as Vigilance Commissioner, Section 198-B, Criminal Procedure Code, could be invoked in this case. After obtaining the approval of the Law Minister, Shri Madhavan on 29th August 1969, and the Chief Minister, Shri Karunanidhi, on 14th September 1969, the State Government by their G.O. No. MC/286-8/69, dated 27th September, 1969, accorded sanction under clause (c) of sub-section (3) of s. 198-B of the Criminal Procedure Code, for the making of a complaint under sub-section (1) of the said s. 198-B for prosecution of Shri Mathew Cherian on a charge of defamation. The City Public Prosecutor was directed to make the complaint which he accordingly filed on 12th December 1969 in the Court of Session, Madras. The Court took cognizance and issued summons for the appearance of the accused on 8th January 1970.

On 31st December 1969, Shri Varghese wrote (*vide* letter Serial No. 11 of the List of documents filed by the State Government) to Shri Royappa, who had taken over from Shri C.A. Ramakrishnan as Chief Secretary, that on Christmas Day, the Private Secretary to the Chief Minister informed him on telephone that representations had been made to the Chief Minister for withdrawal of the prosecution of the Editor of "Broadway Times" after accepting an apology from the Editor. Later, the Deputy Secretary in the Law Department showed him the draft of a letter to be written by the Editor to the Chief Minister. Shri Varghese had requested the Private Secretary to the Chief Minister to arrange an interview with the Chief Minister to enable him to explain personally to the Chief Minister the Administrative aspects of the case before the latter took a decision. Along with this letter, he enclosed a note pointing out :

"A quiet withdrawal of the prosecution at this stage would mean that the mention of the prosecution would go unnoticed and would not have secured the essential purpose, namely an assurance to officers, that the Government would take stern action if they are maliciously victimised. The Editor and his relatives would continue to operate as freely as they had been doing before. They would even do propaganda that if they could get off unscathed after a joint attack on the ex-Chief Secretary and the senior Collector, it would be dangerous for officers to resist their requests. It would, therefore, be most appropriate that along with the withdrawal of the prosecution, a Government press note should be published stating the broad considerations on which the sanction was accorded, the apology now tendered by the accused, and the undertaking given by the accused of good behaviour in future..... It is appropriate that the Editor should be directed to apologise to the officers defamed individually in writing."

On 16th April 1970, Shri Mathew Cherian addressed a letter to the Chief Minister (Serial No. 14 of the List of documents filed by the State Government), in which he observed as follows:

"In my capacity as Editor, Publisher of the paper, I hereby confirm that this article was not intended to nullify (obviously a typing mistake for 'vilify') any officer of the Government of Tamil Nadu. Now that Broadway Times has suspended for some time and in the light of the cordial relationship that exists between my paper and your progressive government, I may be permitted to request you to withdraw this complaint against Broadway Times. Any embarrassment caused because of my publication is regretted."

On the body of this letter itself, the Chief Minister made this summary order :
"C.S.

Case may be withdrawn.

(Sd./-M. Karunanidhi)
21-4-1970"

On 22nd April, 1970, the State Government by their G.O. No. C./286/6/69 (Sl. No. 15) instructed the City Public Prosecutor to apply to the Court for withdrawal of the case C.C. 26/69 on the file of the Additional Sessions Judge.

On 23rd April, 1970, an application was filed under s.494, Criminal Procedure Code by the City Public Prosecutor, stating that since the Government had ordered withdrawal of the case as Shri Mathew Cherian had expressed his regrets for the embarrassment caused by the publication, the court may be pleased to permit the withdrawal of the prosecution. On 27th April, 1970, the Court passed the following order :

“C. C. 26 of 69 taken up at 2.00 P.M. Accused present. The prosecution withdraws the case on separate memo. Therefore, the accused is discharged.”

In his letter dated 9th July, 1969 to the Chief Secretary, Shri Varghese had also suggested that the Government should consider blacklisting M/s. Thompson & Co. Private Ltd., which was the firm owning and operating the “Broadway Times”. From the noting in the State Government’s secret file No. 124/70, it appears that on an earlier occasion, M/s. Thompson & Co. Private Ltd. were blacklisted for a period of five years with effect from 27—7—1962 due to their carelessness in publishing an abridged edition of Walter Scott’s “Quentin Durward”. When the suggestion of Shri Varghese to blacklist the firm again was received, the Education Secretary, Public Works Secretary, The Law Secretary and the Chief Secretary had all examined it and after obtaining orders of the Minister of Law, Backward Classes, Education & Housing (S/Shri S. Madhavan, N. V. Natarajan and V. R. Nedunchezhiyan, respectively), the file was submitted to the Chief Minister, Shri Karunanidhi suggesting blacklisting of this firm for a period of five years. Shri Karunanidhi approved this by his order, dated 28—5—1970. Accordingly, on 9th June, 1970, in G.O. No. G/416/69 (Sl. No. 16) an order was issued that M/s. Thompson & Co. Private Ltd. and its subsidiaries, such as, the Minerva Press, Broadway Times and any other new concern that may be started by Shri Mathew Cherian, should not be entrusted with any printing work of the Government for a period of five years with effect from the date of this order.

On 15th June, 1970, Shri Mathew Cherian addressed a letter to the Chief Minister requesting him to reconsider the blacklisting order. On the body of this letter, Shri Karunanidhi made the following endorsement :—

“C.S.

May be reconsidered.”

and below that, the Chief Secretary, Shri Royappa endorsed :

“Please put up immediately”.

The matter was then re-examined by all the concerned Departments and the Secretaries, Education, P. W. D. and the Chief Secretary reiterated that the blacklisting order should stand and there was no ground for rescinding that order. This was approved by the Minister, Industries (Shri Madhavan) on 27—6—70. The file was then, according to the endorsement of the Chief Secretary, to be circulated to Minister, Backward Classes, and Minister, Education, and Health. On 30—6—70, the Chief Minister obtained the file and passed the following order :

“May be rescinded”.

Accordingly, G.O. No. C-416-5/69, dated 1st July, 1970 (Sl. No. 18) was issued stating that after having carefully reconsidered the order issued in G.O. dated 9th June, 1970, Government have decided to rescind that order and treat it as cancelled. *After issuing the rescinding order*, the Chief Secretary showed the file to the other three Ministers concerned, namely S/Shri Madhavan, Natarajan and Nedunchezhiyan.

During the course of the arguments, a preliminary question had arisen whether the order for withdrawal of the prosecution in question passed by Shri Karunanidhi, had merged in the judicial order of the Additional Sessions Judge, and, if so, would the Commission be competent to inquire into the propriety of such a merged order. A similar question had arisen before Mudholkar Commission which was inquiring into certain allegations against 14 ex-Ministers of Bihar. The following extract from that report lucidly explains what should be the approach to such a question :

“Then there is the argument that the orders of the withdrawal having merged in judicial orders permitting the withdrawal of the cases in question and these orders not having been appealed against or sought to be revised, have become final, the Commission has no jurisdiction to reopen the question as to their propriety and pronounce upon it The Commission has no jurisdiction to consider the propriety of the judicial order. What is, however, important to note is that the charge which the Respondents have to face is that in directing the withdrawal of cases which it was against the public interest to withdraw, they interfered with the course of justice. The decision of the Council of Ministers has not merged in the Magistrate’s order. For, the Magistrate was not acting and could not act on the basis of the decision of the Council of Ministers. He could and must have acted only on the application of the Public Prosecutor under s.494. So, what, if any, could be said to have merged in the judicial order, was, in each case,

the application made therein by the Public Prosecutor..... It is indeed a strange argument that for the Commission to consider the charge would be tantamount to casting a reflection on the court which permitted the withdrawal of cases comprised in this charge. I have already said that the propriety of the Magistrate's order is not under inquiry by this Commission. It is concerned only with that of Government's action..... The normal rule of law is that if a person commits a breach of law, he is answerable for it. It follows from it that when a person is charged with breach of law, he has to be brought to trial and tried in the normal way. To prevent his trial by withdrawing his prosecution in respect of his alleged breach of law by use of the State's power to withdraw it amounts to an interference with the course of justice, unless such a course becomes necessary in the public interest".

It is not necessary to add anything to what has been quoted above. Suffice it to say here that these observations apply with greater force to the facts of the case before me. The Commission is inquiring into the propriety of the administrative action of the Government and not into the legality or propriety of the order passed by the Court allowing the application of the Public Prosecutor to withdraw the case.

On merits, the point for consideration is :

" Whether the Government Order, dated 22nd April 1970 for withdrawal of the prosecution case against Shri Mathew Cherian, and the Government Order, dated 30th June 1970 for rescinding the earlier order, blacklisting M/s. Thompson & Co., Private Ltd., were acts of impropriety and misuse of official position on the part of the then Chief Minister, Shri Karunanidhi.

In his counter-affidavit, dated 23rd July, 1976, Shri Karunanidhi has stated that the order of withdrawal of the prosecution against Shri Mathew Cherian was taken only on the merits of the case, the apology letter tendered by Shri Cherian and no other consideration prevailed in this matter. He has further stated that since the prosecution against Shri Cherian for defamation had already been withdrawn, orders were passed cancelling the blacklisting of the firm by Government.

This two-fold plea taken by Shri Karunanidhi does not rest on sound factual premises.

Taking his second plea first, it appears to be factually wrong that the order cancelling the blacklisting of the firm was influenced or induced by the withdrawal of the prosecution. The order withdrawing the prosecution was passed on 21st April 1970, while the order blacklisting the firm was made on 9th June 1970. There was thus no proximate causal nexus between the withdrawal of the criminal case and the rescission of the blacklisting order. If Shri Karunanidhi felt that after the withdrawal of the prosecution, there was no case for blacklisting the firm, he should not have passed orders to that effect on 9th June 1970, almost six weeks after the withdrawal of the prosecution.

As regards the first plea in his further affidavit, dated 9th September 1976, Shri Karunanidhi appears to have shifted his stand several times. At one place, he seems to suggest that the original order sanctioning the prosecution of Shri Mathew Cherian was itself wrong because the article published by Shri Cherian "really is not very serious and defamatory" and "it is not improbable Thiru Varghese used his influence "in getting clearance from the Customs of the car imported by his son, Mr. Antony. At another place, he maintains that S. 198-B is not intended to "oblige a particular Government Officer to ventilate his grievances against a particular individual."

Then in paragraph 15 he avers :

"It is significant to note that even the object of Mr. Varghese (though now I find from the file it is personal vendetta of Varghese against Mathew Cherian)... *the prosecution was intended to prevent Mathew Cherian from publishing similar articles in future*..

If that was so, it is not understandable why before ordering withdrawal of prosecution, he ~~did not~~ obtain an undertaking from Mathew Cherian not to indulge in such defamatory activity in future. He then reverts to his plea in the first affidavit :

"From the file I find some representation should have been made to me that the prosecution against Mathew Cherian should be withdrawn on the acceptance of an apology from the Editor and my Private Secretary should have telephoned the Vigilance Commissioner Mr. Varghese, whether he would have any objection for the course. Normally it is not necessary for us to consult Mr. Varghese in the matter since the Government was entitled to take a decision in the matter, but purely out of courtesy, he might have telephoned to him. A draft letter of apology was prepared by the Law Department. From the draft letter it will be seen an undertaking was sought to be asked from the Editor that he will not publish in any issue of "Broadway Times anything defamatory against the President, Vice President or Governor of a State, etc., or any other public servant employed with the Union Government or State in respect of the discharge of his public functions.

This was an obvious superfluity for which an undertaking was not necessary".

It is manifest what Shri M. Karunanidhi scoffed at and rejected as "obvious superfluity", was an obvious necessity, necessitated by the norms of propriety, objectivity and good administration.

In paragraph 17 he says :

".....I now come to know Cherian knows Maran. I do not recollect Maran having spoken to me. Even if he has spoken to me, and brought to my notice a gross injustice done to somebody and focussed my attention to it, I feel there is nothing wrong in it. But when I passed the order, I passed it only on merits and I take the full responsibility for passing the order".

It is note worthy while Shri Karunanidhi volunteers to take full responsibility for passing the order for withdrawal of the prosecution, he does not so own in full measure his order, dated 27th September 1969, sanctioning the prosecution of Cherian. He wants to have it belived that he had passed that order (dated 27th September 1969) against his better judgment because "Mr. Varghese has taken advantage of his position as Vigilance Commissioner and has prevented the Secretariat from exercising their mind independently into the matter by poking his nose into the file at every stage and every step. No doubt when the matter was circulated to me.....So as not to offend the Vigilance Commissioner, I agreed with the note and sanctioned prosecution".

It is impossible to accept these shifting, contradictory stands taken by Shri M. Karunanidhi in his affidavits. It is difficult to believe that Shri Varghese was in a position to dominate, or he, in fact dominated, the will of all the high functionaries in the Government Departments concerned with the processing of the case for the prosecution of Cherian. The very fact that the Law Officers of the Government advised that there was no case for prosecution of Cherian on a charge of defaming Shri Antony, shows that the advice tendered by the Law Officers was objective and uninfluenced by extraneous considerations. It does not stand to reason that he, as a wide-awake, experience and well informed Chief Minister, could be misled and induced against his own free will and judgment, by his subordinate Government servant, Shri Varghese, to pass order if the same were wrong and unjust.

Evidence on the record fully bears out that G.O. MC/286-8/69, dated 27th September 1969 sanctioning under S. 198-B, Criminal Procedure Code, prosecution of Shri Mathew Cherian for publishing the defamatory article against T.A. Varghese, Vigilance Commissioner, was passed by the Government after taking into account all the relevant factors and after a thorough consideration of all the materials before it. Amongst these materials were the two letters, dated June 24th, 1969 and July 9th, 1969, from Shri Varghese addressed to the Chief Secretary to the State Government. In his letter, dated 24th June 1969, Shri Varghese emphasised :

"Arising from this episode there is one point to which I would like to draw your attention. Thiru Cherian and his sons in the publishing business, must have contacted other Collectors also on the distribution of the Text book patronage. To my mind the article in the Broadway Times is intended to be a warning to the middling executive officers of the Government to 'Fear and Tremble' when approaches were made to them by the people connected with the Broadway Times on the distribution of Government patronage vested in the officers. For the last two days I was very unhappy indeed at the thought of the Headlines of the Broadway Times peeping out of the Book Stalls in every street corner. If this is the reaction on me, whoh as practically faded out of active service, you could imagine feelings of ambitious and sensitive officers, endeavouring to discharge their public duties without fear or favour. I went through the article many times in search of an actionable passage and felt that a trained lawyer of the Broadway Times had done his job carefully. Perhaps the Law Officers of the Government might be requested to make a closer scrutiny. Young officers do seem to need a measure "of encouragement to face up to this kind or blackmail. I shall be grateful if you can kindly circulate this letter to Chief Minister for his information and kind consideration".

From what has been quoted above, it is demonstrably clear that in initiating this matter Shri Varghese was by no means vindictive. He left the action to be taken entirely to the discretion of the Chief Minister. He was not even sure that the article in question published by Shri Cherian, would come within the mischief of the offence of defamation. What he solicited in this letter was that the Law Officers of the Government might be directed to advice after a close scrutiny of the article in question, as to whether legal action, if any could be taken in respect thereof. Such an action was indicated by him in the larger interest of the administration and its officers who were being victimised by this kind of blackmail. By no stretch of imagination could it be said that Shri Varghese initiated this matter from ulterior motives.

In his second letter, dated July 9th, 1969 addressed to the then Chief Secretary, Shri Varghese said :

"This is in continuation of my D.O., dated 27th June 1969 on the article in the "Broadway Times." I have been advised informally that the article is clearly defamatory. You may kindly check up with the Law Department.

This is not the first time that this paper has indulged in this form of blackmail. I understand that the Government had recently considered the question of prosecution in respect of an article defaming Thiru Venkatachalam who had been Deputy Secretary in the Home Department. Similar attacks have been made on Thiru K. Venkatesan, I.A.S., as Collector of Salem, Thiru P. B. Krishnaswamy, I.A.S. as Collector of Kanyakumari, Thiru E.C.P. Prabhakar, I.A.S. as Director of Agriculture and Thiru T.N. Seshan, I.A.S. as Director of the City Transport, presumably because they had not granted the requests of persons connected with the paper..... I think this is a situation which the Government should take serious note of and initiate corrective action. If officers generally feel helpless in situations like this, a tendency might develop to follow the line of least resistance in respect of the unholy requests of these people. Individual officers who are victimised, might be reluctant to appear in court for fear of further victimisation. All the more reason that the Government should take stern action on occasions, to discourage this technique. I would therefore strongly urge that if the article is clearly defamatory, the offenders should be prosecuted. I am quite willing to give evidence in Court and generally assist the Public Prosecutor to gather the additional information required by him".

In the office notes in which these letters were dealt with in the Chief Secretary's Office, it is stated :—

".....that a detailed examination of the matter was made by the Law Department at the instance of the Vigilance Commissioner as to whether a successful prosecution could be launched against the editor of the "Broadway Times" and others concerned for writing defamatory articles against the Vigilance Commissioner and Thiru Anthony, I.A.S. Law Department has opined that the article against Thiru Anthony, I.A.S. is not actionable whereas the article in so far as it relates to the Vigilance Commissioner is actionable".

There is office note to the effect that orders have been obtained. Then there is another office noting dated 21st/24th August 1970 of the Public (S.C.) Department of the Government saying that I & P may be requested separately to collect and send the other issues of the Broadway Times where the officers of the Government were attacked to the Public (S.C.) Department.

The Secretariat records further show that at the suggestion and information given by the Vigilance Commissioner, issues of the "Broadway Times" dated 7th June 1968, 10th January 1969, 24th January 1969, 31st January 1969, 4th April 1969, which contained defamatory articles against other officers of Tamil Nadu Government were collected.

Shri Venkatesan, I.A.S., Shri V. Venkatachalam, Deputy Secretary, Shri E. C. P. Prabhakar, I.A.S., Shri T.N. Seshan, I.A.S., Shri Antony and Shri Varghese, have filed affidavits before the Commission in which they have cited instances of defamatory articles published against them in "Broadway Times".

Shri Prabhakar in his affidavit has stated that while he was Collector of Madurai, Shri Mathew Cherian had approached him regarding selection of text books for District Board Schools. Since the entire matter of selection of text books was left to a Technical Committee constituted by Shri Prabhakar and this Committee did not select any of Shri Cherian's publications as a text book, two defamatory articles were later brought out against Shri Prabhakar, the first in the issue of "Broadway Times", dated 6th July 1966, in which Shri Prabhakar was described as behaving like a Nawab in summoning different officers to appear before him at the Chepauk office. Shri Prabhakar had taken over as Director of Industries only on 6th July 1966. The write up in the "Broadway Times" of 6th July 1966 as to how he was managing the Industries Department was thus, entirely premature and wholly unjustified and revealed that this publication was maliciously motivated.

Shri T. N. Seshan, I.A.S., in his affidavit has stated that while he was Collector of Madurai from January, 1965 to May 1967, Shri Mathew Cherian had met him and requested the favour of prescribing his text books. The offending article against him in the "Broadway Times" was, however, published earlier when he was Director of Transport.

Shri K. Venkatesan in his affidavit, has deposed that while he was Collector of Salem, Shri Mathew Cherian had published an article in the "Broadway Times" which, contained a sarcastic write-up on him.

Shri V. Venkatachalam has stated in this affidavit that Shri Mathew Cherian had called on him once or twice, while he was Deputy Secretary (Home) in connection with the liquor permits of some of his friends. On being informed that these cases were being processed in the usual routine, Shri Mathew Cherian got offended and later rang up from his residence threatening Shri Venkatachalam that if he did not issue the liquor permit within 48 hours, he would face the consequences. Subsequently, in its issue dated 7th June 1968, the "Broadway Times" published in bold caption on the front page "SACK VENKATACHALAM, DEPUTY SECRETARY HOME". The article contained scurrilous and scandalous attacks against Shri Venkatachalam.

It is apparent from the notings in the office records of the Government Secretariat that all the material was available to the Government and was probably considered by them while taking the decision to prosecute Shri Cherian for publishing the defamatory article against Shri Varghese. Even Shri Karunanidhi in para 4 of his affidavit, dated 9th September 1976, has conceded:- "There have been earlier occasions where the same Broadway Times had published articles against other I.A.S. Officers and those officers who were men of integrity, knew that such publication would not affect them, and they just ignored them as part of their occupational hazard."

Thus at the time of considering the proposal to sanction the prosecution, there was sufficient material before the Government to the effect that Shri Mathew Cherian was in the habit of publishing defamatory articles against high officers of the Government.

It must be remembered that a sanction under s. 198-B, Criminal Procedure Code for prosecution in respect of the defamation of a public servant is not granted as a matter of course. It involves a policy decision taken after due consideration of all the relevant factors and circumstances of the case. Some of the criteria which are kept in view, while according the sanction, are : (i) whether on the evidential material available, there is a reasonable chance of the prosecution resulting in a conviction ? (ii) Whether the defamation in question is in respect of the conduct of the public servant concerned in the discharge of his official duties ? (iii) Whether the prosecution will tend not only to vindicate the reputation of the public servant defamed, but also to protect and maintain the reputation of the administration in general ? These criteria stood manifestly satisfied in the instant case.

The principle underlying this provision (s. 198-B) is that defamation of public servants and high dignitaries of the Government touching their conduct in the discharge of public function, indirectly, causes an injury to the reputation of the administration as well. Such defamation is fraught with a tendency to demoralise not only the victim, but also the public servants, in general and to discourage them from being sharp, unbending and straight in the performance of their public functions.

There is a cardinal principal of evidence that all official acts are presumed to have been regularly and rightly done. In the case of the order sanctioning the prosecution of Cherian, this presumption had, in the light of the evidentiary material before the Government had, matured into a positive fact. The matter was examined thoroughly by the Law Department and in accordance with its advice the proposal for sanctioning prosecution of Cherian was formulated. It was then considered and approved by the Law Minister, Shri Madhavan on 29th August 1969, and thereafter by the Chief Minister, Shri Karunanidhi, on 14th September 1969. Evidently, one of the relevant factors that weighed with the Government in according the sanction, was, that Shri Cherian had been habitually indulging in such blackmailing of Government servants, with impunity, and therefore it was high time to initiate corrective penal action against him.

As regards the conduct of Shri Varghese in pursuing the matter at all stages in the Government Secretariat, it cannot by any standard, be said to be improper or unusual. Although the alleged defamatory article published by Cherian did have a wider impact on the reputation of the Administration in general, yet the fact remains, that the person directly wronged was Shri Varghese. Naturally, he was interested in the vindication of his own reputation and self respect. There was nothing wrong in his pursuing the matter and getting it expedited through the Government Departments concerned. The law prescribed six months' limitation commencing from the date of the crime for filing a complaint under s. 198-B. Shri Vardese's anxiety to get the matter expedited for a final decision by the Government was thus understandable. Nor was there anything a miss in Shri Varghese's conduct in requesting the Government to see that the Public Prosecutor was fully briefed and assisted so as to procure by the proper conduct of the case, a conviction of the accused with a deterrent sentence. This request of his was dealt with and supported by the office and duly approved by the Chief Minister, Shri Karunanidhi.

Further, the original plea taken by Shri Karunanidhi that the order for the withdrawal of the prosecution was made on merits in view of the apology tendered by Shri Cherian, does not rest on *terra firma*. Firstly, in the subsequent affidavit, Shri Karunanidhi, in line with the plea taken by Cherian in his affidavit, tried to justify the article published by Cherian by saying that it was "really not defamatory" because the imputation conveyed by it might be true. There cannot

be both a justification and an apology because the two things are utterly incompatible and mutually destructive. Secondly, a careful perusal of the letter, dated 15th June 1970, which was directly presented by him to Shri Karunanidhi, shows that it was only a pretence of an apology. Indeed, no less a person than its very author, Shri Cherian, has sworn in the affidavit filed before the Commission, that his letter, dated 15th June 1970, "was not a letter of apology admitting any crime or mistake but it was a letter reiterating my stand in publishing the article about Shri Varghese and his son Mr. T. V. Antony in my Weekly "Broadway Times".

The language of the letter, also confirms that in tendering it, Shri Cherian was not actuated by sincere remorse and contrition. Rather, he was professedly impelled to make this "request to withdraw this complaint against Broadway Times", because "now that Broadway Times is suspended for some time" and "cordial relationship exists between my paper and your progressive Government". In the letter, as also in his affidavit, Shri Cherian does not concede, even indirectly, that by publishing that article he had committed any wrong or that what he had stated in that article was incorrect. In the context the words "that this article was not intended to wilfully vilify any officer of the Government" convey the inference that the offending article was intended to expose the truth. Thus the sense of this sentence was clearly antithetical to that of remorse. Similarly, in view of what was said in the body of the letter, the last sentence that "any embarrassment caused because of my publication is regretted" was a mere eyewash and not a genuine regret.

It is well settled that an apology is intended to be evidence of real contriteness, the genuine consciousness of a wrong done, of an injury inflicted, and the earliest desire to make such reparation as lies in the wrong doer's power. It may be unqualified, unequivocal and not hedging and hypothetical in purging the wrong done by the tenderer. Only then it is of any avail before a Court or authority, bound to act in accord with norms of fairness and impartiality.

Even to a layman, from a plain reading of Shri Cherian's letter it is manifest that, taken as a whole, it was not such an apology which could legitimately be made the foundation of the order for withdrawal of the prosecution.

The surrounding circumstances unerringly point to the conclusion that Shri Karunanidhi, was fully conscious of the fact that the aforesaid letter was not a real apology borne out of genuine repentance and a desire on the part of the wrong doer to purge himself of the wrong done by him. Shri Varghese on coming to know that the withdrawal of the prosecution of Cherian is under consideration, wrote to Shri Vaithialingam, Private Secretary to the Chief Minister, seeking an interview with the Chief Minister for explaining the administrative aspects of the case. Annexed to this letter was a note (vide affidavit of Vaithialingam), which I have extracted earlier in this report, in which he suggested that the accused should tender individually to Shri Varghese and Shri Anthony written, unqualified apology expressing sincere regret, that he should not have published the impugned news item and caused mental anguish to the defamed officers, and also give an undertaking not to repeat such defamatory publication against any public servant in future. Shri Varghese further requested the Chief Minister to direct the publication of such apology and undertaking given by Cherian, in a press note issued by the Government. These suggestions were sound, fair and reasonable. They were brought to the notice of the Chief Minister but did not receive due consideration from him. So much so that he did not accede to the request of Shri Varghese for a hearing before passing the order in question.

Shri Karunanidhi in his affidavit appears to justify his refusal to grant a personal hearing to Shri Varghese and his failure to pay due regard to what Shri Varghese had stated in his note, on the ground that Shri Varghese's consent to the withdrawal of the prosecution was not necessary. Technically, this stand of Shri Karunanidhi was not illegal but as a matter of prudence, it was not right to deny Shri Varghese a proper hearing and due consideration of what he had to say; more so in view of the fact that under s. 345 of the Criminal Procedure Code 1898, which was then in force, Shri Varghese only had the power to compound case pending in Court against Shri Cherian. The Chief Minister appears to have acted with such undue clarity that he did not even consult his colleague, the Law Minister, who was a party to the order sanctioning the prosecution of Cherian. He did not have Shri Cherian's letter containing the request for withdrawal, examined even by his own office. He should have known that before the Court, the Public Prosecutor would be required to justify the permission for withdrawal by giving adequate reasons. The proper course for the Chief Minister, was to get Shri Cherian's letter requesting for withdrawal of the prosecution, examined first by the expert in the Law Department, and then by the other Departments concerned. But he deliberately did not adopt that time honoured practice. With undue haste and summarily on the body of Cherian's letter itself, he passed the laconic order, bereft of reasoning, directing the Chief Secretary that the "case may be withdrawn".

Shri Vaithialingam has stated in his affidavit that when Shri Mathew Cherian presented the letter requesting for withdrawal of his case to the Chief Minister, he was accompanied by Shri Maran, nephew of the Chief Minister. In his affidavit, dated 9th September 1976, Shri Karunanidhi has not specifically denied this fact but has stated that :

"Maran knows Mathew Cherian and he might have asked Vaithialingam as to what has happened in this matter. As I have said Maran might have mentioned casually that injustice had been done to Cherian in the blacklisting matter".

In the portion extracted earlier, Shri Karunanidhi had admitted that Maran might have mentioned to me that grave injustice had been done in the case of Cherian. However, he maintains that he had taken the decision to withdraw the prosecution on his own responsibility.

Shri Cherian admits that Shri Maran has been his good friend from the year 1960 and a member of his profession.

In the light of the above discussion, the conclusion is irresistible that the order for withdrawal of the prosecution of Shri Cherian passed by Shri Karunanidhi was an act of gross impropriety and it was, in all probability, committed on the recommendation of his nephew, Shri Maran who, in turn, was a bosom friend of Shri Cherian. Not having been made in the public interest, this order amounted to an interference with the course of justice.

Blacklisting order and its rescission.

It has already been noticed that with regard to the blacklisting order and its rescission Shri Karunanidhi has taken inconsistent stands which do not inspire confidence. The order for withdrawal of the prosecution of Mathew Cherian was passed on 21st April 1970, while the blacklisting order was passed several weeks thereafter on 28th May 1970. The file relating to the blacklisting was also in his hands after passing through the Education Minister on 8th April 1970. He had undone one damage to Mathew Cherian by inflicting a much greater damage cutting at the root of his finance by blacklisting him. Shri Verghese himself has stated in his affidavit :

"This decision was a pleasant surprise to me, for, the disability imposed thereby was far graver in consequence to the party, than the punishment likely to have been imposed on conviction on the defamation charge".

If Shri Karunanidhi had maintained that his decision to withdraw the prosecution was on the ground that a more deterrent punishment by way of blacklisting was being awarded to Shri Mathew Cherian, his stand would have been perfectly understandable, but after approving the blacklisting order on 28th May 1970, he had rescinded it on 30th June 1970. Assuming-but not holding-that there was some justification for Shri Karunanidhi's criticism that all the senior Officers of the Secretariat had ganged up with Shri Verghese who had personal hostility towards Shri Cherian, it is difficult to understand why three of his own colleagues in the Cabinet should have supported the suggestion to blacklist Thompson & Co., and later also, at least one of his colleagues, Shri Madhavan, had agreed with the official view point that there was no ground for rescinding the blacklisting order. Before his other two cabinet colleagues could give their views in the matter, Shri Karunanidhi called for the file and passed orders rescinding the blacklisting order.

On the question whether Shri Karunanidhi was influenced in the matter by Shri Maran, we have the affidavit (Sl. No. 109) of Shri Vaithialingam corroborated by his statement recorded under section 5A by the Investigating Officer assisting the Commission. Shri Vaithialingam has stated that Shri Maran had telephoned to the witness several times, asking him to put up the file of Shri Cherian's case before the Chief Minister for orders. The Chief Minister himself told the witness that he was interested in obliging Shri Mathew Cherian because Shri Maran was putting pressure on him for that purpose.

Shri Karunanidhi, as already noticed, has in his affidavit, admitted that Shri Maran had mentioned to him to undo the gross injustice that had been done in the case of Cherian. Shri Karunanidhi, however, adds that "I felt there is nothing irregular or illegal in this". Shri Karunanidhi has further admitted that "Maran knows Cherian and he might have asked Vaithialingam, as to what had happened in the matter. Maran might have mentioned casually that injustice had been done to Cherian in the blacklisting matter".

As noticed earlier, Shri Cherian has admitted his close connections with Shri Maran since 1960, and that as a friend, he had obliged Shri Maran by lending his car for use in the Election and on several other occasions.

Although Shri Karunanidhi denies that he rescinded the blacklisting order under the extraneous influence of Shri Maran, the undisputed circumstances set out above unmistakably point to the conclusion that he passed that order on the recommendation of Shri Maran. May be, the original order, dated 28th May 1970, blacklisting Thompson & Co., was itself bad on account of the fact that it was passed without giving an opportunity of being heard to Cherian and the other persons having financial interest in Thompson & Co., and as such violative of the rules of natural justice. But the impropriety in rescinding the blacklisting order lay in the fact that the Chief Minister preferred the extraneous recommendation of his nephew to the considered opinion of his colleague, the Law Minister, opposing the rescission of the blacklisting order. Not only this, he abruptly sent for the file of the case which was being circulated to his other two Cabinet colleagues for comments. Shri Karunanidhi has tried to explain this unusual course adopted by him in dealing with Shri Cherian's case, by saying that he was about to go on foreign tour, and further delay in rescission of the blacklisting order would have prolonged the injustice and continuing financial loss to Thompson & Co. This explanation hardly carries conviction. It seems that Shri Karunanidhi adopted this extraordinary course, as he apprehended that his other two Cabinet colleagues, also, might endorse the opinion of the Law Minister, Shri Madhavan and oppose that rescission otherwise, there was no difficulty in calling all the other Cabinet colleagues, and taking a decision in the matter, after mutual discussion and deliberation.

From all that has been said above, the only reasonable conclusion that can be drawn is, that in short circuiting the proper procedure, riding rough-shod over the opinion of his Law Minister, deliberately denying a chance to his two other Cabinet colleagues concerned, to express their views, and acting with a capricious zeal outrunning his discretion, Shri Karunanidhi was propelled by a motive to oblige Shri Cherian, under the extraneous influence of Shri Maran. I will, however, hasten to add that the impropriety involved in rescinding the black listing order, cannot be magnified to the status of an illegality. Nor is it of that gravity which tainted the order for withdrawal of the prosecution. It had no tendency to interfere with the course of justice. The order blacklisting Thompson & Co., and the subsequent order rescinding the earlier one, both were administrative orders wholly within the discretion of the Government.

The second part of Allegation No. 16 contains a general charge that Shri Karunanidhi had kept certain corrupt officials in key posts. Only three of such officials have been named. They are Shri P. K. Nambiar, Shri R. Pasupathy and Shri M. Vaithialingam.

The case of Shri Vaithialingam will be considered while dealing with Allegation No. 9 which specifically relates to him.

With regard to the other two officials, the present Chief Secretary, Shri V. Karthikeyan, after going through the relevant records, has given a certificate which may be seen at page 54 of the Investigation Report. According to this certificate, Shri P. K. Nambiar, I.A.S., was not involved in the payment of higher compensation to Shri Manali Ramakrishna Mudaliar and family in connection with the lands acquired for the Manali Oil Refinery Project, and no charges were framed against him in respect of the Manali Scandal. With regard to the Potato Scandal, a charge was framed against him in April, 1966 for certain irregularities committed by him in regard to the purchase of potatoes from Uttar Pradesh, which resulted in a loss of Rs. 6.34 lakhs to the State Government. The State Government now propose to address the Government of India to reduce the retirement benefits admissible to Shri Nambiar for his failure to follow the proper procedure in this case and for his lapses in certain other cases.

The Chief Secretary has further certified that there was nothing irregular in the posting of Shri P. K. Nambiar as Land Revenue Commissioner. The appointment was made in accordance with his seniority in the I.A.S. cadre and after considering other relevant aspects. It is significant to note that Shri P. K. Nambiar was compulsorily retired on 16th February 1976. According to Shri Karunanidhi, he had initiated the proposal to compulsorily retire him, when he was the Chief Minister. It would, therefore, be wrong to suggest that he had in any way supported him.

With regard to Shri R. Pasupathy, the Chief Secretary has reported that there was an enquiry against him with regard to certain missing Government records while he was Secretary, Board of Revenue, and for causing delays, loss of files, etc., he was punished with stoppage of increment for one year. The allegation that as Secretary, Board of Revenue, he was caught red-handed for burning Government records was not correct. There was no irregularity in his posting as Secretary to Government, Revenue Department which was made in accordance with his seniority and other relevant considerations. Even under the President's rule, Shri Pasupathy continues to be Secretary to Government in the Transport Department. His posting as Revenue Secretary, ordered by Sri Karunanidhi, could not therefore, be said to be improper.

The second part of the Allegation has thus not been substantiated.

CHAPTER VII.

ALLEGATION SERIAL No. 19. AGAINST SHRI M. KARUNANIDHI—A.L. SRINIVASAN.

The Allegation as contained in the Memorandum of Shri Kalyanasundaram read as follows :—

“Mr. Karunanidhi and his friends and associates.—Mr. Karunanidhi, the Chief Minister of Tamil Nadu has been very generous not only to his relatives but also to his friends and associates.

(i) A.L. Srinivasan.—Shri A.L. Srinivasan, currently ranks first in the list of friends of the Chief Minister. He is closely connected with the Chief Minister in the film industry. He recently closed his Studio called “Sarada Studios” on the ground of financial distress, and is known in the film trade as commercially insolvent. However, the Chief Minister Mr. Karunanidhi has found his friend Mr. A.L. Srinivasan to be resourceful enough to go in for “Beer” production and has given a licence to him to start a factory for the manufacture of “Beer”. What are the resources of Mr. A.L. Srinivasan and how this licence has been given to him are matters requiring an investigation.

This Mr. A.L. Srinivasan is trying to forcibly acquire ownership of about 100 acres of land in the vicinity of the Madras City through influence of Chief Minister and the Revenue Board. The persons who are already in possession and ownership will be evicted. A probe into the transactions of Shri A.L. Srinivasan is necessary.”

The facts as revealed by the report of the Investigating Agency appointed by the Commission under section 5-A of the Act, the evidence on affidavits received by the Commission and the official files of the State Government are as follows :—

Consequent on the lifting of Prohibition in the State of Tamil Nadu in September, 1971, the State Government examined the possibility of establishing industrial units for manufacture of beer and other liquor. Thirty applications had been received by the Industries Department of the State Government for the necessary permit to manufacture beer and liquor. These applications were reviewed at a meeting in the Cabinet room on 4th August 1971 presided over by the Chief Minister himself, and attended by the Chief Secretary, the Excise Commissioner and the Finance Secretary. At this meeting, Shri Karunanidhi himself decided that in order to cut short the time taken for setting up the units for the manufacture of beer, etc., it would be desirable to select a few industrialists from among the applicants whose applications had already been received in the Industries Department. The criteria for selection was also laid down by the Chief Minister himself at this meeting. These were : (i) Financial standing of the applicant concerned ; (ii) the managerial capacity as assessed by the State Government ; and (iii) Preference to be given to applicants belonging to the State of Tamil Nadu. Shri Karunanidhi then desired that out of the applicants, the following eight persons should be invited for an informal discussion and formal applications obtained from them for setting up the units to produce beer and Indian made foreign liquor :—

1. Messrs. Vorion Industrial Chemicals Ltd.
2. National Co.
3. Esselium and Co.
4. Kothari and Sons.
5. A.L. Srinivasan.
6. M.A. Chidambaram.
7. Mohan of Dyer Meakins.
8. N. Damodaran of Premier Mills.

It is significant to note that Shri A.L. Srinivasan was not one of the 30 applicants whose cases were reviewed on 4th August 1971. His name therefore, appears to have been suggested by Shri Karunanidhi *suo motu* even though he had not applied to the Industries Department.

During the relevant period, Selvi M.S. Ramesh, I.A.S. was acting as Secretary, Industries Department. In her affidavit she has deposed that on 11th August 1971, she put up a note indicating the action taken on the decisions arrived at the meeting held under the Chairmanship of the Chief Minister on 4th August 1971 (Serial No. 2 in the list of documents filed by the State Government). In this note she has recorded that the eight applicants selected by the Chief Minister were contacted. Shri A.L. Srinivasan stated that he had not so far put in any formal application, and after further talks with his collaborators, he had to submit proposals to the Government in about a week's time.

Another meeting was held on 12th August 1971 at which the Chief Minister was informed of the latest position. A formal application from A.L. Srinivasan was received on 19th August 1971. On 23rd August 1971, Selvi M. S. Ramesh put up another note analysing in detail the applications received and seeking orders as to which and how many from the applicants should be selected and licensed. Thereafter, there was another meeting on 30th August 1971 under the Chairmanship of the Chief Minister, which was also attended by the Chief Secretary, the Excise Commissioner and the Finance Secretary. The decisions taken at this meeting were recorded by Selvi M.S. Ramesh in her note dated 30th August 1971, which was seen by the Finance Secretary, the Excise Secretary and the Chief Secretary on the same date and approved by Shri M. Karunanidhi, the Chief Minister on 31st August 1971, in the following endorsement:—

“Agreed. One more applicant may be selected for beer factory.”

In accordance with the decision taken at this meeting, which was also approved in the note circulated by Selvi M.S. Ramesh, by the Chief Minister, the following parties were selected for setting up units to produce beer :—

1. Messrs. Sultan Maraickar and Sons Ltd.
2. A.L. Srinivasan.
3. Messrs. Kothari and Sons.

(It may incidentally be mentioned that Messrs. Sultan Maraickar and Sons Ltd. are the proprietors of the Nagapattinam Import and Export Co., which figures in Allegation No. 20—Kodai-Palani Road—and Messrs. Kothari and Sons as Sugar Mills figure in Allegation No. 17—Sugar Scandal).

When the application filed on 19th August 1971 by A.L. Srinivasan was processed through the Board of Revenue, the Board made the following comments :—

“In the application presented to the Industries Department, the applicant has stated that he proposes to set up the Brewery Unit either in Nilgiris District or around Madras City. But, in the scheme report in reply to the Board’s reference, dated 7th September 1971, the applicant has proposed to run the Brewery in Chingleput District. He has also enclosed a challan for Rs. 200 towards application fee. As the information furnished was not in Form B-1, the application was addressed for the same on 1st October 1971. In his reply to this reference he has stated that he proposes to construct and work a brewery at Thakolam near Arkonam, North Arcot, or around Chingleput in Chingleput District. The Board therefore submits that since it is evident that the applicant has not secured a proper place for running the brewery and has not stated whether permission for obtaining water and power supply has been secured, he is being addressed to select the place first and register the name of the firm according to the Companies Act and send for the perusal of the Board together with full description of vessels, apparatus, etc.”

From the affidavit of Shri V. Sankaran (AW-3), it appears that Shri A.L. Srinivasan purchased 14.40 acres of land situated in Village Paruthupet, about two miles from Avadi from Shri V. Sankaran for locating the beer manufacturing industry which he proposed to set up in pursuance of a licence granted to him by the Tamil Nadu Government. This transaction was completed only in July, 1972.

From the file it appears that a Letter of Intent sanctioning the proposal to set up a brewery over this plot acquired by A.L. Srinivasan from Shri V. Sankaran was issued by the Excise and Prohibition Department of the Government of Tamil Nadu on the 8th June, 1973. This Letter of Intent was valid for a period of six months. On 10th November 1973, A.L. Srinivasan applied for extending the validity of the Letter of Intent by 18 months. On 21st December 1973, the Excise and Prohibition Department agreed to an extension of the period by six months beyond 7th December 1973. On 3rd May, 1974, A.L. Srinivasan made another application for further extending the validity of the Letter of Intent by at least 12 months, in view of hold-up of the project because of his application for registration with D.G.T.D. pending with the Government of India. On 14th August 1974 the Excise and Prohibition Department revoked the Letter of Intent in view of the decision taken by the State Government to reintroduce total prohibition with effect from 1st September 1974.

It will thus be seen that the beer manufacturing project of Shri A.L. Srinivasan remained a paper project and never really got off the ground. The following points, however, come up for decisions :—

1. Whether A.L. Srinivasan was a close friend and associate of Shri Karunanidhi?
2. Whether he was commercially insolvent?
3. Whether the Brewery licence was given to him in violation of the prescribed procedure and norms?

With regard to the first point, the affidavits of S/Shri M. Bhaktavathsalam, T. R. Venkataraman, A. Rajasekaran, R. Chelladurai, T. S. Lakshminarayanan and M. S. Srinivasan are relevant. Shri Bhaktavathsalam in his affidavit states that A.L. Srinivasan was close to Shri M. Karunanidhi and, at the instance of Shri Karunanidhi, he had to write off arrears of rent due from A. L. Srinivasan to him in respect of Majestic Studios to the extent of about Rs. 5 lakhs.

Shri T. R. Venkataraman, Assistant Secretary to Government, Home (Police) Department, has deposed about the favour shown by Shri Karunanidhi to A.L. Srinivasan by nominating him as a Steward of the Madras Race Club.

Shri Rajasekharan, Head of the Production Department of Tamil Nadu Films Division, has testified that in the matter of entrustment of Government assignment for processing and printing of documentary films, in terms of cost and receiving large assignments as regards News Reels, Messrs. Sarada Studios of A.L. Srinivasan ranked second during the period 1972-73 to 1974-75.

Shri R. Chelladurai, Assistant Commissioner of Labour, Madras, has deposed about certain labour disputes between the two Labour Unions in Sarada Studios belonging to Shri A. L. Srinivasan and the management, in which he had held Conciliation Proceedings under the Industrial Disputes Act. He had reported failure of the Conciliation talks on 6—9—1971. At the instance of the Chief Minister and the then Labour Minister, Shri N. V. Natarajan, he was forced to effect an illegal settlement between the Union and the Management on 7th August 1972. This agreement was signed in the immediate presence of the Labour Minister, which was unusual.

Shri T. S. Lakshminarayanan, Assistant Provident Fund Commissioner, Madras, who was in-charge of the provisions of the Employees' Provident Fund Act, has deposed that Messrs. Sarada Studios belonging to A. L. Srinivasan was a chronic defaulter in remitting the employer's contribution under this Act. He had sent up several proposals for prosecution to the Government of Tamil Nadu but the requisite sanction was not received from the Government.

Shri M. S. Srinivasan, General Secretary of the Film Employees' Federation, South India, has also deposed about a strike in Sarada Studios, in which Shri Karunanidhi acted in a partisan manner to protect the interests of A. L. Srinivasan.

Shri Karunanidhi in the counter-affidavit, dated 23rd July 1976, has observed as follows :—

“ I no doubt know him well, but there was no special relationship or close association between us.”

Shri A. L. Srinivasan in his affidavit filed in response to the notice served on him under rule 5(2) (a) has not specifically denied his having been a close friend and associate of Shri Karunanidhi.

In view of the evidence discussed above and also in view of the large instances where Shri Karunanidhi in his official capacity had shown favours to Shri A. L. Srinivasan, the fact that Shri Srinivasan was a close friend and associate of Shri Karunanidhi seems to have been established.

With regard to the *second* point, Shri Karunanidhi in his counter-affidavit has denied the allegation that A. L. Srinivasan was commercially insolvent. The most clinching evidence on this point is the affidavit of Shri D. Dhanraj, Income-Tax Officer, who has handled the assessment proceedings of Shri A. L. Srinivasan for the assessment years 1956—57 to 1973—74. He has also enclosed a copy of the statement of the total income and the tax assessed thereon during these years. This statement would show that almost year after year, Shri A. L. Srinivasan has been showing losses on the ground that his liabilities exceeded his assets. It is also on record that A. L. Srinivasan was a chronic defaulter of even the employer's contribution to the Employees' Provident Fund, of his own workers. In these circumstances, even though it may not be correct to say that he was commercially insolvent, he was certainly not one of sound financial standing and he did not, therefore, satisfy the first criterion laid down by the Chief Minister himself at the meeting held on 4th August 1971.

With regard to the third point, from the official files as well as the evidence on record, it has been established that Shri Karunanidhi adopted a somewhat arbitrary procedure in selecting eight persons, including A. L. Srinivasan, who were to be invited for discussion. There was obviously, no consideration on the merits of these applications even according to the criteria laid down by Shri Karunanidhi himself. A. L. Srinivasan was not a person of sound financial standing and the suggestion of his name for being invited for discussion when he had not even applied, certainly smacks of favouritism.

Again, in selecting three persons out of the eight invited for discussion, no reasons were advanced for preferring these three persons or for rejecting the other five. The application of Shri A. L. Srinivasan was not even in the prescribed form and, as pointed out by the Board of Revenue, subsequently, his application lacked several material particulars. He had not even acquired a piece of land for locating the project. The subsequent performance of A. L. Srinivasan proves his unsuitability. It took several months for him to rectify the defects in his application, and then, after the Letter of Intent was issued, he went on applying for extension on one pretext or the other and could not get even the foundation of the brewery laid before prohibition was reintroduced with effect from 1st September 1974.

In these circumstances, it has been established that Shri Karunanidhi's decision that Shri A. L. Srinivasan should be given a Brewery Licence was in violation of the prescribed procedure and the established norms.

With regard to the *second part* of the Allegation, namely, that A. L. Srinivasan attempted to acquire ownership over about 100 acres of land in the vicinity of Madras City with the help of Shri Karunanidhi, the Investigation Agency appointed by the Commission under section 5-A of the Act have not been able to find any evidence in support thereof. According to the affidavit of A. L. Srinivasan himself, he has been claiming "patta" over certain lands in village Aiyavaram which had been notified under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948. This matter is *sub judice* before the Settlement Officer, Coimbatore, as well as in a writ petition filed by A. L. Srinivasan in the High Court at Madras. In these circumstances, his contention that he himself an aggrieved party and could not, therefore, have been favoured in the matter by Shri Karunanidhi, seems to be correct.

This part of the Allegation has thus, not been substantiated.

CHAPTER VIII.

ALLEGATION No. 22 (c). AGAINST SHRI ANBIL.

(Eviction of Tenants of Shri Thathachari.)

Allegation No. 22 (c) as contained in the Memorandum of Shri M. Kalyanasundaram reads as follows :—

“ The Agricultural Minister instead of protecting the poor peasants and tenants used his office and position and influence as Agricultural Minister in the forcible eviction of forty tenants in the Thathachari Estate of 80 acres. The role played by Mr. Anbil Dharmalingam, the circumstances and manner in which such tenants were evicted and why Mr. Anbil Dharmalingam should go to the aid of the landlord and for what consideration are all points requiring a probe.”

In the affidavit filed by Shri M. Kalyanasundaram in respect of Allegation No. 22, he has not given any additional facts or particulars as far as 22 (c) is concerned. The Investigating Officer appointed under section 5-A by the Commission has examined four witnesses, including Shri S. R. Srinivasa Thathachari, who is the landlord of Thathachari Estate referred to in the memorandum of Shri Kalyanasundaram.

From the facts collected by the Investigating Officer, it appears that there was a land dispute between the landlord, Shri Srinivasa Thathachari, who is in possession of 65 acres of wet land known as Thathachari Pannai in Mudiur Village, Lalgudi Taluk, Trichy District and his Poruppals, or agents, who were looking after the cultivation of various plots into which he had divided his lands. There is a long history of litigation between the landlord and the poruppals and there have been several cases between the parties. The matter was finally decided by the High Court, which held that the landlord, Shri Srinivasa Thathachari, was in possession and enjoyment of the lands in question and the poruppals were only coolies under him and had no tenancy rights over those lands. Against the order of the High Court, some of the poruppals filed an appeal in the Supreme Court, which was withdrawn on 21-1-1974. The dispute has thus, been finally adjudicated by a competent court. The Investigation Agency have not been able to find any evidence to show that Shri Anbil Dharmalingam was in any way interested in this matter. At any rate, when the landlord has won the case in court, the question of evicting tenants or protecting poor peasants does not arise.

In the circumstances, Allegation No. 22 (c) against Shri Anbil Dharmalingam has not been substantiated.

CHAPTER IX.

ALLEGATION SERIAL NO. 22(d). AGAINST SHRI ANBIL DHARMALINGAM & OTHERS.

(Jangamarajapuram Murder Case)

Allegation No. 22 (d) as contained in the Gazette Notification, dated February 1976 referred to the Commission of Inquiry, may be reproduced below :

"Serial No. 22.

Memorandum of Shri M. Kalyanasundaram

Mr. ANBIL DHARMALINGAM

(d) Mr. Anbil Dharmalingam's relatives were involved in a murder case in village Anbil, in Lalgudi taluk, Tiruchi district. Here again the Ministerial influence interfered in the police enquiry. On account of the Ministerial influence the police conducted the enquiry in such a manner that all the culprits got away. It is on record that no less a person than the District Judge of Tiruchy had to pass very severe strictures on the methods of enquiry adopted by the police in that case. A probe into the matter will throw more light.

Brief facts of the murder case mentioned in Allegation No. 22 (d) are as follows :

Jangamarajapuram, Mangammalpuram and Kila Anbil, are three adjoining hamlets, compendiously known as Village 'Anbil'. Shri Dharmalingam, known as 'Anbil Dharmalingam', hails from Jangamarajapuram hamlet. In all these three hamlets, 90 per cent of the population is of 'Kallar' community to which Shri Anbil Dharmalingam belongs.

On 6th April 1971, at about 20.45 hours, Shrimathi Govindammal, wife of Santhanam Thangaraj, the elder brother of one manickam (deceased), appeared before the village Munsiff of Jangamarajapuram and reported that, at 20.30 hours, the same evening, she was sitting on the door-step, of the house of Thangathammal, her mother-in-law. Her brother-in-law, Manickam, was lying on a cot on the road near the lodge. Palaniandi Sholagar was also present there. At that time Karutha Babu (A-1) armed with a *vel*-stick, Palaniandi Sholagar (A-2) armed with a *vel*-stick, Veerayyan (A-3) armed with a stick, and Ayeepillai (A-4) came to the house of Manickam. On seeing this, the complainant (the wife of the elder brother of the deceased Manickam) rushed there to persuade the accused to go away. But A-2 pushed her aside by pulling her hair and rushed towards the cot on which the deceased Manickam lay asleep. Muruganandam, son of the deceased woke up the latter. But before the deceased could get up, A-1, Karutha Babu, plunged his *vel*-stick into the stomach of the deceased. A-2, Palaniandi Sholagar, aimed a blow at Manickam with his *vel*-stick, but it struck the tiles of the house, which broke and hit the head of Manickam. Manickam caught hold of the Kuthukole of Karutha Babu. Karutha Babu and Palaniandi Thevar were dragging away Manickam, who fell on the road. Dorairaj, the complainant, and her husband's brother's wife, Chellam, snatched away the Kuthukole of Karutha Babu and rescued the deceased, whereupon all the four culprits ran away. Dorairaj, Chellam and the complainant lifted Manickam and placed him on the pial. He died soon after. The complainant, her mother-in-law Thangammal, her husband's brother's wife Chellam, Dorairaj and Muruganandam had witnessed the entire occurrence. The complainant added that street tube-light was on at that time.

The Munsiff, after recording the report, sent it immediately to Police Station, Lalgudi, where it was received at 10.45 p.m.; whereupon, Case No. CR 616/71 (F.I.R.—Annexure ('A') under Section 302, I.P.C. was registered. The Express FIR was sent to the officer concerned and the Inspector of Police, Lalgudi, Shri J. Ramakrishnan, reached the scene of occurrence, the same night. However, he held the inquest on 7th April 1971 at about 8 A.M. and sent the body of the deceased for *post-mortem* examination. In the inquest report, Ex.CW-29/2, he recorded statements of the complainant and all the four eye-witnesses mentioned in the FIR, namely: (1) Thangathammal (2) Smt. Chellammal (3) Muruganandam (4) Dorairaj.

After closing the inquest, the Inspector examined two more witnesses, namely, Chellappa n (aged 91), son of Arumugam, Kalathi vendra, North Street, Jangamarajapuram, and (2) Dharmalingam (aged 46), son of Nalla Sholagar, Pudu Street, Jangamarajapuram. They professed to be eye witnesses of the occurrence though not mentioned in the FIR, and gave some what different version of the occurrence than the one given by the complainant.

Sig.—33A

The Investigating Officer on reaching the spot, the same night learnt that, three of the accused mentioned in the FIR, were closely related to Anbil Dharmalingam.

The exact relationship of the four accused is given below :

- (1) Palaniandi Sholagar, (A-2), Father-in-law of Thiru Anbil Dharmalingam.
- (2) Vecrayyan (A-3), Co-brother of Palaniandi Sholagar (A-2).
- (3) Ayeepillai (A-4), wife of Palaniandi Sholagar (A-2), and Mother-in-law of Shri Anbil Dharmalingam.
- (4) Karutha Babu (A-1), is the own brother of A-4.

Shri Rajamohan, I.P.S., the then Superintendent of Police, Tiruchy, visited the scene of occurrence the same afternoon, i.e., on 7th April 1971, and made enquiries into the case. He also came to know the relationship of the four culprits, mentioned in the FIR, with Shri Anbil Dharmalingam during his stay in the village.

On 8th April 1971 the Inspector arrested A-1, Karutha Babu, at Pullambadi, and remanded him. Accused A-2 to A-4 were, however, not arrested. After closing the investigation, the Investigating Officer obtained the opinion (Ex. CW-30/1) of the Public Prosecutor on 21st May 1971 when the latter was at Ootacamund on Summer vacation.

It may be stated here that, earlier, within three days of the occurrence, S. Rangarajan, brother of the deceased, Manickam, had sent an application to the *District Superintendent of Police, Tiruchirappalli* (with copies to I.G. Police, Chief Minister and Governor, Tamil Nadu) stating that the accused in the case, relating to the murder of his brother, "happened to be the relatives of the Minister. They are very influential. Therefore, in this case the D.S.P. Vairayan Servai on his own initiative, produced Karutha Babu at Lalgudi Police Station. It is learnt that attempts are being to remove the remaining three accused from this case". He prayed, "in the interest of the justice and fair administration that this murder case may be asked to investigate by an impartial officer". It is admitted by the then Superintendent of Police, Tiruchy that this petition was received in his office on 12th April 1971.

Shri Hajee P.K. Jamal Mohammed, then Public Prosecutor, Trichy, when approached by the Inspector of Police, Shri Ramakrishnan for his opinion in the murder case under reference, recorded the following note (Vide Ex. C.W. 30/1) :

"I have perused the case diary and the statements. P.W.'s 1 to 4 are close relatives of the deceased. Admittedly, the feelings between the deceased and accused 1 to 4 have been strained due to earlier incidents and there is no love lost between them. The statements of the relatives have to be scrutinized. Independent witnesses (viz.) P.W.6 and P.W.7 have no reason to falsely implicate any one and exculpate any person from the occurrence. Considering their statements, only the first accused will be liable. Even if the evidence of P.Ws. 1 to 4's is to be accepted, A-2 to A-4 went only to question the deceased as to his conduct that evening. No other motive is attributed to them.

I am of opinion a charge sheet can be laid down only against A-1 for an offence u/s 302 I.P.C."

On the very next day, i.e., on 22nd May 1971, armed with the Public Prosecutor's opinion, the Inspector laid a *challan* (charge-sheet) in court against Babu accused, only. The first column of the Form of the charge-sheet, required to be filled in by the Investigating Officer, prescribed by the Government, is captioned :

"Name and addresses of accused persons not sent up for trial, whether arrested or not arrested, including absconders (show absconders in red ink.)"

This column was left blank and names of the three accused mentioned in the FIR, admittedly not arrested by the Police, were not shown therein, when this charge-sheet was laid in court for proceedings against the other accused. In the second column, titled, "in Custody", the name of Babu (Accused A-1) was written. The charge-sheet contained the following prosecution allegation :—

"On 6th April 1971 at about 6-30 p.m. in front of the house of the deceased Manickam in South Street Jangamarajapuram, the accused Karutha Babu, alias Babu, noted in the charge-sheet, committed murder of deceased Manickam by intentionally stabbing him with a vel-stick due to petty quarrel. Hence charge-sheet".

(Sd.) *Inspector,*
23rd May 1971.

The Sub-Magistrate Lalgudi, who conducted the preliminary inquiry, committed A-1 to the Court of Session on 23rd July 1971, for trial.

The case was tried by the Sessions Judge Trichy who, by his order, dated 29th January 1972, acquitted the accused, Karutha Babu (A-1). While doing so, he passed these strictures against the investigating Police Officers :

“Para 14 : He has registered the case against the accused and 3 other persons mentioned in the report Exhibit P-1. But unfortunately, the Police Officer who investigated the case has chosen to lay the charge sheet only against the accused for reasons best known to himself.

Para 15 : The Police Officer in this case has taken the role of a Judge and has chosen to accept the version given by PW-8 Dharmalingam and P.W.-9 +Chellappan with regard to the manner in which the occurrence took place and has laid the charge-sheet only against the accused. However, without laying any charge sheet against the three persons, who were said to have taken part in this incident.

Para 21 : The prosecution has not examined any other person in the locality.”

After the acquittal of the accused by the Court, the Public Prosecutor wrote a note, dated 18th March 1972, wherein he submitted *inter alia* that “the Police have a duty cast on them to gather the facts and sit on judgment on them before filing a charge-sheet.....” He opined that it is “not a fit case to prefer on appeal against acquittal”. He also mentioned that “in the circumstances the observations of the learned Judge are not warranted or justified” (*vide* C.W. 30/3).

However, the Public Prosecutor, Madras did not agree with the suggestion to file a petition for expunction of the remarks.

The Government vide copy of G.O. Rt. No.5096: Home Department, dated 16th December 1972 from Home Department agreed with the Public Prosecutor that “this is not a fit case to file a petition before the High Court, Madras, to expunge the remarks made by the Sessions Judge, Tiruchirappalli in S.C. No. 74/71”.

After the receipt of the investigation report under s. 5-A, the Commission issued interrogatories to (1) Shri J. Ramakrishnan, Inspector of Police, formerly Lalgudi P.S. now at CB CID, Madras. (2) Shri A. Raj Mohan, I.P.S., Superintendent of Police, formerly at Tiruchy, now S.P., Investigation Cell, Madras and (3) Shri P.K. Hajee Jamal Mohamed, formerly Public Prosecutor, Trichy, now practising as Advocate in the High Court, Madras. All the three officers sent replies to the Interrogatories supported by their Affidavits. I found that some of the answers given by them were incomplete and rather evasive. I therefore decided to summon them for examination.

Shri Ramakrishnan was examined on 2nd December 1976 as C.W. 29. He deposed that he had investigated the murder case under reference while posted as Inspector of Police, Lalgudi. The FIR mentioned the names of four persons in the ‘column’ of the accused. They were : (1) Karutha Babu, alias Babu (A-1), (2) Palaniandi Sholagar (A-2), (3) Veerayyan (A-3), and (4) Ayeepillai (A-4). He came to know at the spot that these accused persons, A-2 to A-4, were closely related to Shri Dharmalingam then Cabinet Minister in the State. He also know fully well that all the four witnesses mentioned in the FIR by Smt. Govindammal the complainant, namely : (1) Thangathammal, (2) Smt. Chellammal, (3) Muruganandam and (4) Dorairaj had, fully and completely, supported the allegations mentioned in the FIR. But during investigation, he could arrest only one accused, namely, A-1 (Karutha Babu) on 8th April 1971, while the remaining three accused had absconded from the village. He admitted that he did not take out warrants for any court for the arrest of the absconders or for effecting attachment of their property, for u/s 87/88 Cr. P.C., or for getting them proclaimed as absconders. He added that two witnesses, namely : (1) Chellappan and (2) Dharmalingam, were also examined by him at the spot, but only after the completion of the inquest report, and that they gave a version different from the one in the FIR.

Shri Ramakrishnan deposed that later, he was ordered, in writing by the Deputy Superintendent of Police, Vairayan, who was supervising the investigation, to get the opinion of the Public Prosecutor in the case. In compliance therewith, he approached the Public Prosecutor and obtained his opinion (Ex. CW-30/1), dated 21st May 1971. The Inspector, however, stated that he could not produce the written orders given to him in this behalf by the Deputy Superintendent of Police.

Therefore, as advised by the learned Public Prosecutor, he filed charge-sheet (Ex. CW-29/1) in the court on 22nd May 1971, wherein he prosecuted only one accused, namely Karutha Babu. On his attention being drawn to the first column of the charge-sheet, which requires that the names of the accused, not sent up, whether arrested or not, are to

be mentioned therein, the witness stated that he did not write the name of the three absconding accused, as required, in the relevant column of the charge-sheet. Shri Ramakrishnan insisted before the Commission that this column is only intended for the accused who are not covered in in columns 2 and 3. In short, he could not satisfactorily explain this lapse on his part.

The deponent admitted that the two witnesses, namely, Chellappan and Dharmalingam, though not mentioned in the FIR, had volunteered their statements to him, after he had completed the inquest report. They belong to the Kallar community to which Shri Dharmalingam belongs. He added that he was not aware that they were connected with his family.

While obtaining the opinion of the Public Prosecutor the deponent did not discuss with him anything verbally, but only gave him the case diary. The deponent stated that, normally, the Police approach the Public Prosecutor and get his legal opinion in "difficult" cases, after the completion of the investigation, or wherever any legal opinion is desired. He quoted Paras 588-A of the P.S.C., Vol. I—Orders—which enabled the investigating officer to seek the opinion of the Public Prosecutor of the District and to act accordingly.

Shri Ramakrishnan read the opinion given by the Public Prosecutor at the spot, but did not question the veracity of the facts stated therein. He further admitted that the FIR in this case had been lodged, immediately before a responsible person, namely, the village Munsiff, and he had no reason to doubt the veracity of the facts given therein and that there existed no enmity between the three accused under reference and the eyewitnesses. Questioned why he assumed the role of a Judge and decided not to prosecute the culprits named in the FIR, he replied :

"It was very unfortunate because I did not act as a Judge. I acted on the instructions of the Public Prosecutor and the written instructions of the D.S.P..... The PP was senior in age and experience. I completely and blindly did whatever the PP advised because he was senior in age and more experience than myself. These witnesses did not support the Prosecution case."

He admitted that he had voluntarily made the statement before the investigating officer, nominated under section 5-A by the Commission, in which he stated :

"But the PP did not consult me even. If I had been left to myself, I would have charge-sheeted A-1--A-4, but the PP did not consult me even after he went through the CD file and as PP was the highest Law Officer of a District I could not but lay the charge-sheet against A-1 only."

The deponent denied the suggestion that he had deliberately introduced the two witnesses (1) Chellappan, (2) Dharmalingam, in order to spoil the prosecution case, at the behest of Shri Dharmalingam, Minister.

He conceded that, despite the strictures passed by the Sessions Judge against him nobody had called for his explanation in this connection. However, he added, that his explanation "has been called recently, only after the promulgation of the President's Rule in the State".

Shri P.K. Jamal Mohammad, the then Public Prosecutor, was examined as CW-30 on 2nd December 1976. He deposed that in May 1971, when he was on vacation in Ootacamund with his family, Inspector Ramakrishnan approached him for his opinion in the murder case of P.S. Lalgudi. After going through the case diary, the deponent gave his opinion, dated 21st May 1971 (Ex. CW-30/1). He read the F.I.R. and the statements under s. 161 Cr. P.C. and noticed that the witness, Muruganandan, spoke only about the part played by A-1 in the alleged murder, while all the remaining three P.W.S. supported the complainant against all the four accused. He agreed that there was no "recorded enmity" between the eye-witnesses and A-2 to A-4, nor had they any motive to falsely implicate them. However, on the facts of the whole case, he had come to the conclusion that only A-1 should be charge-sheeted.

Shri Jamal Mohammad further stated that he conducted the prosecution of this murder case in the Court of Session, and, when some prosecution witnesses departed from their statements under Section 161 Cr. P.C., he made no attempt to cross-examine them with the permission of the Court. The deponent added that he omitted to do so because the Dy. S. P., who was then present in the Court, had, also, asked him not to treat the witnesses as hostile. Although he was not bound by the advice of the Dy. S.P., he felt that the case would not improve by treating them as hostile.

The Public Prosecutor admitted that when he gave his opinion he knew that the accused, A-2 to A-4, were related to the Minister Shri Dharmalingam. The deponent, however, denied the suggestion that he had given his opinion under any such influence.

He admitted that after the conclusion of the trial he had written the note, dated 19th March 1972 (Ex. CW-30/3), in which he opined that the case was not fit for appeal, but the strictures passed by the trial Judge were not warranted or justified.

When his attention was drawn to the charge-sheet, wherein the names of A-2 to A-4 were not mentioned in the relevant column, the deponent said that this aspect did not strike him, when he conducted the case in the Sessions Court.

The Public Prosecutor further admitted that he knew Shri Anbil Dharmalingam, before he became a Minister, as Secretary of the D.M.K. Party in the District of Trichy. He also knew the Chief Minister and the Law Minister, but he was not in any way influenced by them while dealing with this case.

The deponent added that after the acquittal of the accused, Shri Madhavan, the Law Minister, had an occasion to discuss this case with him, but at that time, the Law Minister did not order him to initiate action for filing any appeal against the acquittal in the High Court.

Shri Rajamohan, I.P.S., now D.I.G. of Police, was examined as CW-31 on 3rd December 1976. He stated that as S.P. of the District he had visited the scene of occurrence in this murder case, which was in the place known as Jangamarajapuram on 7th April 1971, after he had received the FIR in this case. Since the murder had taken place in village Anbil, from where the Minister, Shri Anbil Dharmalingam hailed, he thought it proper to visit the village. On arrival at the spot, during the course of his inquiries, he came to know that the accused persons were related to the Minister. He stayed there for four hours, but did not visit the village again in this case. He knew while at the spot, that the four witnesses mentioned in the FIR had supported the story narrated in the FIR, but added they were closely related to the deceased. He admitted that relationship is not a disqualification, but added that "the courts view the statements of close relations with suspicion." At the spot, too, he came across two witnesses, Dharmalingam and Chellappan, who gave a different version, but they were not named in the FIR.

Shri Rajamohan admitted that the petition, Ex. CW-31/1 (Translation Ex. C.W.-31/1A) was received in his office on 12th April 1971 from the brother of the deceased, saying that the investigating officer was making efforts to save three of the accused, namely A-2 to A-4. He sent his report, Ex. CW-31/2, on this petition to the Deputy Inspector-General on 15th June 1971 as the D.I.G. had called for a report on 15th May 1971. He had delayed the report because of his other multifarious, important duties. When his attention was drawn to the observation in his report, that "after obtaining the opinion of Public Prosecutor, the case will be charged" and that the Public Prosecutor had already given his opinion on 21st May 1971, the deponent stated that his report was based on the progress report received from the officer, the Deputy Superintendent of Police, and at that time, the last progress report indicated that the opinion of the Public Prosecutor was yet to be obtained. When his attention was drawn to the Deputy Superintendent of Police's Progress Report, dated 23rd May 1971, wherein it was mentioned that the Public Prosecutor's opinion was obtained on 21st May and the charge-sheet has been laid against A-1 on 23rd May 1971, he said that it had not been received in his office by 15th June 1971, although the Deputy Superintendent of Police's Office was situated at the District Headquarters.

He admitted that the Sessions Judge had passed strictures in this case against the Police, but, by the time a copy of the Judgment was received in his office, he had been transferred from the District.

The witness was confronted with that portion of his report, Ex. CW. 31/2, to the D.I.G. in which he had stated that "there is no evidence and support that the other accused (A-2 to A-4) took part in the crime", and questioned as to why he did not consider the statements made by the eye-witnesses cited in the F.I.R., as evidence in the case. He gave an extremely garbled and unsatisfactory answer.

He denied the suggestion that he had deliberately delayed the report, dated 15th April 1971, so that, meanwhile, the charge sheet may be laid in Court. He characterised it only an "omission" to verify from the Investigating Officer, before sending the report to the D.I.G. about the opinion of the Public Prosecutor.

The witness admitted that he had not mentioned the relationship of A-2 to A-4 in his report sent to the D.I.G., but he denied that it was a deliberate omission. He knew of the public criticism of acquittal in this case in the newspapers, but it was for the officers concerned, who had succeeded him, to initiate action in the matter.

He said the Public Prosecutor was consulted according to the Police Standing Orders. When he saw two versions in the case, it was decided to take the opinion of the Public Prosecutor. He denied that the charge-sheet against A-2 to A-4 was dropped at the instance of the Minister, or that the case was manipulated during investigation to see that A-1, also, was acquitted by the Court. He had no occasion to discuss the case with the Chief Minister or any other Minister.

After the conclusion of the oral evidence, Shri Vanamamalai, Counsel for the State of Tamil Nadu, and Shri Palpandian, Counsel for the Memorialist, addressed their arguments.

Both the Counsel have argued that the case had been deliberately sabotaged by the Investigating Officer, in collusion with the Public Prosecutor and at the behest and instance of Shri Anbil Dharmalingam then Cabinet Minister, because close relations were admittedly involved therein. Counsel, however, conceded that there was no direct evidence to show that Shri Anbil Dharmalingam had interfered in or influenced the Police investigation. There is no evidence on the record to suggest any direct or indirect exercise of influence by any Minister on the Police to save A-2 to A-4, who are the relations of Shri Anbil Dharmalingam.

It was, however, suggested by the Counsel that the State Government's failure to prefer an appeal against the acquittal to the High Court, shows that the Ministry was interested in saving A-2 to A-4 who were admittedly related to the Cabinet Minister.

I have carefully scrutinised the investigation report under Section 5-A and the evidential material on record including the depositions of witnesses examined before the Commission, the Police file and the Judicial file of the murder case, as also the office notings on the file of the Superintendent of Police. There is not the slightest doubt in my mind that the investigation of this case was conducted in a most improper, partial and perfunctory manner. The Investigating Officer, for reasons best known to him, cast aside the evidence of the three eye-witnesses named in the F.I.R., who had clearly supported the version of the complainant. There is no denying the fact that the complaint (F.I.R.) was lodged by Smt. Govindammal with the Village Munsiff almost spontaneously, within 15 minutes of the occurrence. The informant had no time to concoct a story or to introduce false witnesses to support her case. In their statements recorded during the inquest, the witnesses named in the F.I.R., had fully supported the prosecution story narrated by the informant. There was no material before the investigating officer to show that these eye-witnesses had any enmity or motive to involve A-2 to A-4, falsely, in this capital case. Despite all this the investigating officer, introduced two witnesses, Chellappan and Dharmalingam, who, as subsequent events proved, were Trojan Horses charged with the mission to scuttle the prosecution case from within. The names of these witnesses did not figure in the F. I. R. They did not make any statement during the inquest. Through them, the Investigating Officer, brought on the file a version contrary to the one given by the informant and her supporting eye-witnesses. He made no genuine efforts to arrest, or even examine, the three accused (A-2 to A-4) who were close relatives of the Minister. He did not care to apply to the Magistrate to obtain warrants of arrest against these accused. Nor did he move the Magistrate for taking proceedings under Section 87/88 of the Code of Criminal Procedure, 1898, to compel their appearance. The weapon, which, according to the two imported witnesses, the deceased had and wielded, was admittedly not found at the place of occurrence or anywhere else. All these stark circumstances should have put an unbiased investigating Officer on inquiry as to the background of these two intruding witnesses. Instead of investigating their connections with the accused party and putting their version in the right perspective, the Investigating Officer approached the Public Prosecutor—presumably under the advice of his superior officers. Rule 588-A of the P.S.O. Volume I, quoted by the Investigating Officer, for justifying this course adopted by him, *prima facie*, had no application to the facts of this case. This rule seems to apply to those cases, only, where there is a complaint and a counter-complaint, "obviously arising out of the same transaction". Such was not the case here.

Be that as it may, in rushing to the Public Prosecutor, the Investigating Officer was not acting in good faith, that it is, honestly and with due care and caution. At that stage, the investigation of the case was far from being complete. Investigation, as explained by the Supreme Court in *H. N. Rishbud v. State of Delhi* (1955), SCR 1150, at pp. 1157-1188, includes all the proceedings under the Code of Criminal Procedure for the collection of evidence conducted by a Police Officer and two of the important steps in such investigation required to be taken by the investigator are : (i) Discovery and arrest of the suspected offender and (ii) Collection of evidence relating to the commission of the offence, which, *inter alia*, consists of (a) examination of various persons, including the accused, and the reduction of their statements into writing, (b) the search of places for discovery and arrest of the accused or for seizure of things considered necessary for the investigation, to be produced at the trial. The Investigating Officer did not take any such steps.

It is therefore, obvious that the Public Prosecutor was approached to get an opinion favourable to the three accused, A-2 to A-4, who were related to Shri Anbil Dharmalingam.

From the Progress Report, dated 20—4—1971, of the Deputy Superintendent of Police (since dead), who was supervising the case, I find that it had been decided to consult the Public Prosecutor sometime before 20—4—1971. Having obtained the Public Prosecutor's "opinion", the Investigating Officer blindly followed it, although he knew or must have known, that this "opinion" was manifestly wrong, and biased in favour of A-2 to A-4. Indeed, the Investigating Officer frankly *admitted* in his deposition before the Commission, that *left to himself he would* have charge-sheeted all the four accused, A-1 to A-4, but, plaintively added, with a tinge of irony and regret, that the Public Prosecutor did not discuss the matter with him while giving his "opinion" as a result whereof, he (Ramakrishnan) became more or less helpless in the matter. Thus, Ramakrishnan's stand seems to be that he was misguided only by the wrong "opinion" of the Public Prosecutor, which, he felt bound to follow, although, in the circumstances of this case, he may well have pleaded misdirection by his superior Police Officers, also.

Even so, there was no justification, whatever, for not giving any particulars of the three accused, A-2 to A-4, (who were named in the F.I.R.) in the relevant column of the charge-sheet, as prescribed by the State Government, under Section 173, of the Code of Criminal Procedure. The very wording of the caption of this column of the prescribed Form, shows that it is meant for those accused who are not sent up for trial, irrespective of whether they are arrested or not by the police. As an impartial and straight forward Officer, he should have mentioned A-2 to A-4 in this column so that nothing material was withheld from the Court, which might, if it so considered fit, summon such accused persons for inquiry and trial.

The Public Prosecutor also behaved in very erratic and peculiar fashion. He did not apply his mind, both, in giving the patently wrong and biased opinion and also later in conducting the prosecution case at the trial. Arrogating to himself the functions of the Trial Court, he opined that PW-1 to PW-4 are close relatives of the deceased while PW-6 and PW-7 were independent witnesses having no reason to falsely implicate any one and exculpate any person from the occurrence. This opinion was transparently biased, verging on perversity.

Haji Jamal Mohammad admitted before the Commission that when he found that the witnesses (PW-6 and PW-7) did not adhere to their statements recorded under section 161, Criminal Procedure Code, he made no request to the Court to declare them hostile or to grant him permission to cross-examine those witnesses to impeach their credit. Questioned with regard to this lapse, he first tried to blame it on the Deputy Superintendent of Police, who had supervised the investigation of this case and was present in the Trial Court, when these witnesses turned adverse to the prosecution. According to Shri Jamal Mohammad, the Deputy Superintendent of Police had told him not to get the witnesses declared hostile. Furthermore, he did not scrutinise the charge-sheet as laid in Court by the Police, to ensure whether it had been filled in and prepared in accordance with the Form prescribed by the Government. He never pointed out to the Investigating Officer, to remove the defect of non-mention of the particulars of the three accused, A-2 to A-4, in the prescribed column of the charge-sheet.

After the case had ended in acquittal, the then Public Prosecutor-as he admits-wrote the note, Ex. CW-30/3, dated 19—3—1972, wherein he expressed the opinion that the remarks of the learned trial Judge against the Police were unjustified, and that it was not a fit case for filing an appeal in the High Court against the Order of acquittal passed by the trial Court.

No useful purpose would be served to argue at this stage as to what could have been the fate of the State appeal, if filed by the Government. However, so far as the strictures passed by the learned Sessions Judge are concerned, there can be no manner of doubt that they were fully justified on the facts of the case. Had the Government approached the High Court in appeal there was every possibility of these strictures being affirmed, with remarks of a bigger spectrum and greater severity, super added. Perhaps, it was because of this apprehension that nobody ventured to approach the High Court even for expunction of these strictures.

Shri Rajamohan, the then Superintendent of Police, Trichy, also played a role which does no credit to the high post he was holding as Superintendent of Police. He reached the scene of murder one day after receiving copy of F.I.R. on 7-4-1971, and made enquiries from which he came to know that the three accused were close relations of the Minister, Shri Anbil Dharmalingam. Instead of directing the investigation on correct lines, he appears to have tacitly or expressly approved the conduct of the investigation in a manner biased in favour of those accused who were closely related to the Minister. Having come to know that the F. I. R. had been promptly lodged and fully corroborated, at least by three eye-witnesses, who had no enmity with the accused, A-2 to A-4, he would have been well advised to order the chargesheeting of all the four alleged culprits, rather than permit his subordinate Investigating Officer to run to the Public Prosecutor for an opinion. Instead of asking the investigating Officer to arrest, or at least to

examine A-2 to A-4, and thus to ensure a full, fair and unbiased investigation of the case, he himself misdirected the investigation by directing the Investigating Officer "that they should arrest the 'correct accused' only 'on the basis of investigations made by them'". Subsequent events have confirmed that what was meant by the term "correct accused", was the accused not closely related to the Minister.

Again, his conduct in dealing with the petition filed by the brother of the deceased, within four days of the murder, gives enough insight into the working of his mind *vis-a-vis* the accused admittedly, related to Shri Anbil Dharmalingam. It is surprising that he sat over that petition for two months and then sent a report to his higher officer, which was factually incorrect in material particulars. By the time he sent his report, dated 12-6-1971, the charge-sheet had been laid in Court on 22-5-1971 against one accused, only. Precisely, this was the apprehension that had been expressed by the brother of the deceased in his petition addressed to the Deputy Inspector-General of Police. This fact was again mentioned in the Progress Report, dated 23-5-1971, sent by the Deputy Superintendent of Police to the witness. Even, in the face of these irrefutable facts, Shri Rajmohan had the temerity to tell the Commission that this Progress Report had not come to his knowledge by the time he sent his report, dated 12-6-1971. It is difficult to believe that such an important matter concerning the accused, who were related to a Cabinet Minister, had not come to his knowledge or was not within his knowledge, by the time he sent his comments on the said petition. This report made by him reads as under :

"The petitioner has alleged that Deputy Superintendent of Police, Tiruchirappalli (Rural) Thiru S. Viravan is not investigating the murder case of P. S. Lalgudi properly and is trying to remove the names of some of the accused since they are related to the local Minister.

"I have made discreet enquiries in this connection and I have also visited the village on 7-4-1971. This relates to Lalgudi P.S. Cr. No. 616/71, under section 302, I.P.C. This took place on 6-4-1971 (vide G.C.R. No. 2/71 of Tiruchirappalli Rural Sub-division. The complainant has implicated 4 persons and during investigation, it was found that only, A-1 Karutha Babu murdered the deceased and there is no evidence to support that the other accused took part in the crime. *After obtaining the opinion of the Public Prosecutor the case will be charged.*"

"The allegations are baseless and no action is called for. The reference in original received from the Range Office is enclosed herewith."

It will be seen that in this report, Shri Rajmohan had the audacity to misstate that there was 'no evidence' to support the complainant's case about the participation of A-2 to A-4 in the crime. Shri Rajmohan was specifically questioned on this point, as under :

"Q : Kindly see your report, Ex. CW 31/2, wherein you have mentioned :

"..... and there is no evidence to support that the other accused took part in the crime."

Did you not consider the statements of the four eye-witnesses supporting the prosecution as 'evidence' in this case?"

The witness replied :

"It is a fact that I have stated like this. But, as I have already mentioned, these witnesses are closely related to the deceased and I had a different version also from some other witnesses and at that stage, it was decided to consult the Public Prosecutor."

Earlier, the witness had stated that the four eye-witnesses who had supported the story in the F.I.R., were relations of the deceased, and that "Courts view the statements of relations with suspicion". It is manifest that the witness was trying to justify his misstatement by a preposterous argument. Time and again, the Supreme Court has pointed out that a prosecution witness who is related to the deceased, is most interested in bringing the right culprit to book, and such relationship of an eye-witness far from being a disqualification, is often a guarantee of his veracity, if the presence of such a witness on the scene of occurrence is probable. In the instant case, the deceased was murdered while asleep in front of his house. Presence of these relative witnesses at the time and place of occurrence, was therefore highly probable and natural. On the other hand, the two intruding witnesses were mere 'passers-by' and were not inhabitants of the immediate locality.

The second glaring misstatement of fact in Shri Rajmohan's report arises out of the fact that the charge-sheet had been laid on 22-5-1971 against one accused only, after a post-haste, incomplete, half-baked and partial investigation, about three weeks prior to making of this report, Ex. CW-30/2, by him, after hurriedly consulting the Public Prosecutor ; while in his report he said that the charge-sheet "will be" laid. No record of the "discreet enquiries" made by the witness is available. The presumption is that no such record was ever prepared.

In the light of the above discussion, the conclusion is irresistible that all these acts of impropriety, partiality, and irregularities were designedly committed by the Investigation officer, the Superintendent of Police and the Public Prosecutor to save the three accused, A-2 to A-4, who were closely related to the Minister, Shri Anbil Dharmalingam, from prosecution, with consequent failure of justice.

This takes me to next question, namely, whether the improprieties and irregularities committed by the officers concerned with the investigation or the conduct of the prosecution, were induced by the exercise of influence by Shri Anbil Dharmalingam or his cabinet colleagues? That is to say, whether the "Ministerial influence had interfered in the Police enquiry?"

There is no direct evidence on this point. In the witness-stand, Sarvashri Ramakrishnan, Jamal Mohammad, and Rajamohan have denied that Shri Anbil Dharmalingam or any other Minister had spoken to them or influenced them in the conduct of the investigation or the prosecution of the case.

There are two circumstances, which suggest the possibility of some Ministerial interference or influence working on the aforesaid officers. It appears from the evidence of Sarvashri Jamal Mohammad (C.W. 30) and Rajamohan (C.W. 31), that soon after the pronouncement of the judgment of the trial Court, the Ministers and the Officers concerned had come to know about the acquittal in this murder case, the strictures passed by the trial Court and the public criticism about the conduct of the investigation and the prosecution of the case. According to Shri Rajamohan, he learnt about this judgment of acquittal (containing strictures against the Police) from a newspaper item which appeared around 19th February 1972, and subsequently, Shri Kamaraj in his speech adversely commented against the conduct of the investigation and prosecution in this case. More or less to the same effect is the evidence of Shri Jamal Mohammad. Thereupon, Shri Madhavan, Law Minister asked Shri Jamal Mohammad, the then Public Prosecutor about the case and the reason why A-2 to A-4 had not been prosecuted. Shri Jamal Mohammad apprised him of his opinion. (It will not be out of place to note here that Shri Jamal Mohammad had close affinity with the D.M.K. Party. He had, admittedly, applied for D.M.K. ticket to contest election for an Assembly seat from Tiruchy Constituency.) In spite of this information, the Law Minister or his Cabinet colleagues did not direct the filing of an appeal against the order of acquittal passed by the trial Court. This is one circumstance.

The second circumstance, which furnishes some indication about the direct or indirect interference by the then D.M.K. Government, is that in spite of their having come to know about the severe strictures passed against the Police Officers connected with the investigation of this murder case, the State Government neither took any action to get the strictures expunged; nor proceeded against the Police Officers whose faulty and biased investigation had led to the failure of justice.

In the published reply which was sent by the Chief Minister, Shri Karunanidhi on behalf of himself and his Cabinet colleagues to the Prime Minister in 1972, there is an oblique suggestion that the strictures were not justified as "it cannot be stated that all the persons whose names are found in the F.I.R. should necessarily be charge-sheeted irrespective of the fact whether there is evidence against them or not". Inconsistently with this, in his counter-affidavit, dated 23rd July, 1976, Shri Anbil Dharmalingam has stated that the Government had called upon the concerned Police Officers to give their explanations and their explanations were found to be acceptable. This statement of Shri Anbil Dharmalingam has been contradicted and *prima facie* falsified by no less a witness than Shri Ramakrishnan, C.W. 29, the then Investigating Officer, himself, who has testified that no such explanation of his was ever called before the imposition of the President's rule in Tamil Nadu. Shri Rajamohan also does not mention the calling of any explanation from any Police Officer connected with the investigation of that murder case. Shri Ramakrishnan has vouched that it was only after the imposition of the President's rule, that his explanation was called in respect of the investigation of this murder case.

These two circumstances do raise a strong suspicion that the Investigation Officers, the Superintendent of Police and the Public Prosecutor, all, misconducted themselves in respect of the investigation or prosecution of this murder case, possibly, under the influence of or interference from Shri Anbil Dharmalingam or any of his Cabinet colleagues. But this inference does not rest on *terra firma*. Its status is no more than of a plausible conjecture. But suspicions, surmises and conjectures, even if plausible as they are in this case, are no substitute for positive proof. Nor does the aforesaid fact, exclude the alternative hypothesis that these officers on coming to know the relation ship of these accused with the Minister, might have on their own taken it into their head that by saving these accused from prosecution they would oblige the Minister or win his favour, support and patronage for advancement in their service careers.

To sum up, while it has been established that in committing these acts of omission and commission calculated to save the accused A-2 to A-4 from prosecution, and which eventually led to the collapse of the entire prosecution case, the Investigating Officers, the then Superintendent of Police and the Public Prosecutor, were all influenced with the knowledge and consciousness that these accused were closely related to the Minister, Shri Anbil Dharmalingam this lone fact in the absence of other evidence, is not sufficient to establish beyond doubt that in acting as they did in respect of the investigation and prosecution of this murder case, they were necessarily induced by any direction or interference proceeding from the said Minister or his Cabinet colleagues.

SUMMARY OF CONCLUSIONS.

ALLEGATION No. 3 (TRACTOR).

The allegation that Messrs. Wallace Cartwright & Co., London, paid for the purchase of the Tractor from Messrs. Massey Ferguson, London, and that the tractor was misused in Shri Karunanidhi's farm in Tiruvarur in Thanjavur district, has not been substantiated. The inordinate delay in registering the tractor in question as well as the fact that some tractors were actually engaged in ploughing Shri Karunanidhi's lands, might have created reasonable suspicion in the mind of the Memorialist, Shri M. G. Ramachandran and led him to believe : "It all smells a rat."

ALLEGATION No. 11 (a)—NATHAN PUBLICATIONS.

(a) It has been cogently proved that Shri Anbil Dharmalingam had intimate relations with Shri Kasthuri Chettiar and his brother, Shri Pandurangam Chettiar, Partners of Nathan Publications, and they had joint business interests.

(b) From the evidence which mainly consists of authentic Income-tax records, registered documents, the statements of Income-tax officials, officials of the Registration Department, Village Headman, etc., it is abundantly clear that Shri Anbil Dharmalingam and his family members, and Shri Kasthuri Chettiar and Shri Pandurangam Chettiar, were not affluent prior to 1967 and there was a spurt in their affluence and prosperity after the D.M.K. came into power in 1967.

(c) The appointment of Nathan Publications as distributors of text books for two Development Districts during 1970-71, was in contravention of the rules and norms of propriety. Shri V. R. Nedunchezhiyan, the then Education Minister, was responsible for preferring Nathan Publications over Palaniappa Brothers, who had quoted 5.5 per cent as against Nathan Publications' 6 per cent and had also done satisfactory work during the previous two years, as distributors for Trichy North District. He was also responsible for violating the principle laid down in G. Os. 432 and 600, of appointing one Distributor for one Development District, without any adequate reasons. He was also responsible for taking a decision on a proposal directly put up to him as Chairman of the Executive Committee of the Text Book Corporation, in violation of the normal Procedure, and thus confronting the other two members of the Executive Committee with a *fait accompli*. Since Shri Kasthuri Chettiar and Shri Pandurangam Chettiar, Partners of Nathan Publications, were staunch members of the D.M.K. Party and Shri Anbil Dharmalingam's sister Dhanamanickam, was also a partner in this concern, the conclusion is inescapable that the appointment of Nathan Publications in violation of the rules and the norms of propriety, was clearly with the motive of favouring either members or supporters of the ruling Party.

ALLEGATION No. 11 (b)—AERIAL SPRAYING.

The following charges have been established by cogent, convincing and reliable evidence, oral, documentary and circumstantial :—

*Regarding Aerial Spraying Contracts of 1970-71.***I. Against Shri Anbil Dharmalingam—**

(i) That Shri Anbil Dharmalingam acting in concert with and through V. Rajagopal, entered into an agreement with the Operators whereby he agreed to receive gratification in the shape of commission as a motive or reward for securing for the operators who were Members of the Indian Agricultural Aviation Association, Bombay, by inducing with the exercise of his personal influence, the Chief Minister, Shri M. Karunanidhi of the Government of Tamil Nadu, and the Director of Agriculture, Tamil Nadu, Shri Hari Bhaskar, contracts for the aerial spraying of crops from helicopter during 1970-1971, in Tamil Nadu, at the rate of Rs. 9 per acre;

(ii) That in pursuance of the aforesaid arrangement, a firm, in the name of Ponnee Agencies, was floated in which Mrs. N. D. Mahalakshmi, a 'dummy' partner was inducted, only to cover and conceal the share which Shri Anbil Dharmalingam was to receive equally with Rajagopal of 66 per cent of the commission collected from the Operators;

(iii) That in pursuance of the aforesaid arrangement, Shri Anbil Dharmalingam, actually received Rs. 20,000 in cash on 1st July 1970, towards his share of the "Commission", through V. Rajagopal collected from the Operators.

II. Against Shri Karunanidhi, the then Chief Minister—

(i) That on November 17, 1970, Shri Karunanidhi abusing his official position, as the Chief Minister of the State of Tamil Nadu, accepted, through his Private Secretary, Vaithialingam, a sum of Rs. 25,000 as illegal gratification, from H. P. Rao, Managing Director of Pushpaka Aviation (P) Ltd., Bombay, as a motive or reward for awarding to the said Company aerial spraying contract during the year 1970-71 in respect of an acreage of 1.5 lakhs at the rate of Rs. 9 per acre, a rate which was in excess of what that Company itself had originally quoted;

(ii) That in awarding the aerial spraying contracts of 1970-71 at the rate of Rs. 9 per acre to the Operators who were members of the Indian Agricultural Aviation Association, Bombay, Shri Karunanidhi, being influenced by extraneous considerations, abusing his official position as Chief Minister, and acting in utter disregard of the norms of propriety, fair practice and good administration, designedly stalled and foiled the rightful move of Shrimati Sathyavani Muthu the then Agriculture Minister, to fix the rate at Rs. 8.25 per acre, through negotiations with the Operators;

(iii) That in awarding the aforesaid contract in 1970-71, to Pushpaka Aviation, at the rate of Rs. 9 per acre; as against their original quotation of Rs. 8 per acre, Shri M. Karunanidhi the then Chief Minister, actuated by the said corrupt motive of pecuniary gain to himself, improperly and designedly brushed aside the proposal of the Secretary for Agriculture, for making an attempt to persuade Pushpaka Aviation (P) Ltd., in the first instance, to agree to do the spraying work at their original quotation of Rs. 8 per acre.

*Regarding the Contracts of 1971-72.***I. Against Shri M. Karunanidhi, the then Chief Minister—**

(i) That on 13th August 1971, Shri M. Karunanidhi, abusing his position as Chief Minister of Tamil Nadu, received through his Private Secretary, Vaithialingam, an illegal cash gratification of Rs. 25,000 in the shape of advance commission, from H. P. Rao, Managing Director of Pushpaka Aviation (P) Ltd., Bombay, as a motive or reward for doing acts in connection with his official functions, such as prompt clearance of the bills of that Company for payment, the delivery of signed contract-deed to them and the allocation of more acreage to that Company for spraying etc;

(ii) That on 18th September 1971, Shri Karunanidhi, abusing his official position as Chief Minister, peremptorily demanded, through his Private Secretary, Vaithialingam, from the Operators, payment of illegal gratification, in the shape of commission at 90 paise per acre immediately in advance, without any vouchers, off-the-record, as a condition or motive for allowing payment of their pending bills, and for allocating them further work, and eventually forced the Operators to agree to pay commission of 90 paise per acre in advance, in two instalments at 45 paise per acre in respect of the acreages covered upto 19th September 1971;

(iii) That on 22nd September 1971, in pursuance of the aforesaid demand, and imposed arrangement, Shri Karunanidhi, abusing his official position as Chief Minister, received through his Private Secretary, Vaithilingam, a total sum of Rs. 1,17,273 from the seven Operators including Cambata, Captain, Krishnan and others, as a motive or reward for doing acts connected with his official functions, such as releasing payment of their pending bills in respect of the work done upto 19th September 1971 and for allocating further work at the contractual rate of Rs. 11 per acre, etc.

II. Against Shri Anbil Dharmalingam—

(i) That Shri Anbil Dharmalingam, abusing his official position as the Minister for Agriculture, acting in concert with V. Rajagopal, and initially negotiating through V. Rajagopal and later after direct talks with the Operators, on July 2, 1971, finalised an arrangement whereby he agreed to award to the Operators aerial contracts in 1971-72 at the rate of Rs. 11 per acre in consideration of their paying 'commission' at the rate of 80 paise per acre to and through the firm Ponnee Enterprises, managed by V. Rajagopal.

III. Against Shri Karunanidhi and Shri Anbil Dharmalingam—

(i) That in 1971, Shri Karunanidhi and Shri Anbil Dharmalingam abusing their official positions as the Chief Minister and the Minister for Agriculture, Tamil Nadu, respectively, conceived in concert a plan to bring down the Aviation Operators to their heels and make them submit to their extortionate demands for gratification in the shape of commission, and in implementation of that plan issued verbal instructions to the Government officials, particularly, Vaithilingam, Vedanarayanan and Hari Bhaskar, and through them took the following steps:

(a) The contract deeds, in duplicate, signed by the Operators were obtained from them by the Director of Agriculture with the representation that one copy of the same would be returned to them in due course after being signed and completed on behalf of the Government; but with the solitary exception of Pushpaka Aviation, whose Managing Director had with less resistance and little delay complied with the peremptory demand of the Chief Minister to pay him the gratification, such copies of the signed contract deeds were never returned to the Operators, despite repeated requests made by them;

(b) By giving the Operators to understand that for 1971-72 they had been awarded the contracts at Rs. 11 per acre, they (Operators) were induced to undertake large-scale aerial spraying operations and incur heavy expenditure in compliance with the work allocation orders in which the rate at which they were to be paid for the spraying, was deliberately not specified;

(c) The Secretary and the Director of Agriculture were directed with a view to ensure regular payment of the commission by the Operators, that payments in respect of the arrears of the preceding year (1970-71) as well as for the work done during 1971-72 in anticipation of signing of the formal contract, could be settled and the signed contracts handed over only to those Operators who had paid the commission as demanded by the Ministers;

(d) In order to ensure better control over the settlement of the bills of the Operators settling of their bills which had been delegated to the District Agriculture Officers, was designedly centralised and they were asked to send all the bills to the Office of the Director of Agriculture for "scrutiny"—the only scrutiny exercised at the Directorate being whether the "commission" had been paid or not, as stipulated by the Ministers;

(e) Such orders releasing payments or for clearance of the bills were issued by the Director of Agriculture, only when the concerned Operator/Operators had paid the commission in respect of a particular area covered during a period by the spraying operations, in advance, without vouchers, and the fact of such payment was communicated to the Director by the Chief Minister/the Minister directly or through Vaithilingam or Vedanarayanan;

(f) The non-return of the signed contract deeds, was designed to serve a double purpose (i) to emasculate the Operators from enforcing payment of their bills or seeking redress through Courts; (ii) to keep the Operators under constant threat and fear that the Government might by signing these Contracts, at any time, impose a penalty at the rate of Rs. 5 per acre on the allocated acreage, on the slightest excuse of a default on the part of the Operators in the performance of the contract.

(ii) That in causing the issue of work allocation orders and the commencement of spraying work by the Operators, before the execution and completion of the formal contract-deeds, Shri Karunanidhi, the then Chief Minister and Shri Anbil Dharmalingam acted with grave irregularity and impropriety in wilful contravention of Article 166 of the Madras Financial Code and Article 299 of the Constitution.

(iii) That in July, 1971, Shri Karunanidhi and Shri Anbil Dharmalingam, abusing their official positions as Chief Minister and the Minister for Agriculture, respectively, acting in accordance with a pre-arranged plan conceived in concert by them, and in disregard of the norms of propriety, fairness and the rules, and actuated by corrupt motives, induced under pressure Vedanarayanan, Secretary for Agriculture, against the latter's better judgment, to put up a proposal (which was eventually approved by them) for rejecting on some excuse the tender of H. S. Shoba Singh (P) Ltd. for the year 1971-72, even though it was the lowest, i.e. Rs. 9.50 per acre, and for accepting the quotation of Rs. 11 per acre from the other Operator-members of the Association, even though the same was in excess of the ceiling rate of Rs. 10 per acre fixed by the Government of India.

(iv) That Shri Dharmalingam, the then Minister for Agriculture, Tamil Nadu, acting in pursuance of a pre-arranged plan conceived in concert with Shri Karunanidhi, Chief Minister, abusing his official position as Minister, and actuated by corrupt motives, first, on 19th July 1971 and again on 21st July 1971, demanded from the Operators, who met him on these dates, illegal gratification in the shape of commission at the rate of Re. 1, or at least, 90 paise per acre, to be paid through an agent other than V. Rajagopal, or the Ponnee Enterprises.

(v) That Shri Anbil Dharmalingam, acting in pursuance of a pre-arranged plan conceived by him in concert with Shri Karunanidhi, the then Chief Minister, and by abusing his official position as Minister for Agriculture, directly received from the Operators illegal gratifications in amounts and on dates noted below, as a motive or reward for doing acts connected with his official functions.

- (a) Rs. 1,41,650 in cash on 11th October 1971.
- (b) Rs. 41,714 in cash on 25th October 1971.
- (c) Rs. 52,676 in cash on 6th November 1971.
- (d) Rs. 53,359 in cash on 25th November 1971.
- (e) Rs. 64,502 in cash on 23rd December 1971.
- (f) Rs. 17,603 from H.P. Rao after 25th November 1971.
- (g) Rs. 16,242 from P.G. Dastoor after 25th November 1971.

TOTAL—Rs. 3,87,746.

(vi) That Shri Karunanidhi, being the Chief Minister and Shri Anbil Dharmalingam, the Agriculture Minister of Tamil Nadu, during the period from April 1973 to 3rd February, 1976, abusing their official positions in the State Government, and actuated by ulterior motives, attempted to stall, thwart and frustrate the investigation under the Code of Criminal Procedure, 1898, of the criminal case, R.C.No. 2/73, registered on 5th April 1973 under ss. 120B, 161, 162, 163, 165 and 165A I.P.C. and s. 5(2) read with s. 5(i) (d) of the Prevention of Corruption Act, 1947, by refusing to allow the Investigating Officers of the Central Bureau of Investigation to scrutinise fully and freely official records in the custody of the Government and its Departments, relating to the award of the aerial spraying contracts of 1970-71, 1971-72, nor allowed the said investigating officers to take over any documents, whatever, from such records, despite the assurance given on their behalf by the then Governor of Tamil Nadu in his letter dated July 16, 1974, addressed to the Minister of State, Ministry of Home Affairs, Government of India, New Delhi.

iv. Against Shri Anbil Dharmalingam—

It has been *prima facie* established, that during 1971-72, while as Minister for Agriculture, Tamil Nadu, Shri Anbil Dharmalingam received pecuniary benefits from V. Rajagopal in the shape of payment by the latter towards the petrol consumed in the cars used by Shri Anbil Dharmalingam or his son, Poyyamozhi, and also towards other household expenses of Shri Anbil Dharmalingam, exceeding Rs. 11,080, in the aggregate, and Shri Dharmalingam never reimbursed V. Rajagopal with regard to those expenses. These acts of Shri Anbil Dharmalingam were connected with his misconduct in receiving or agreeing to receive gratification in the shape of 'commission' from the Operators in respect of the aerial spraying contracts in question through V. Rajagopal and the firms floated by him. This misconduct of Shri Anbil Dharmalingam was also against the Code of Conduct for Ministers laid down by the D.M.K. Government, themselves.

ALLEGATION No. 12 (S. KANDAPPAN, M.L.A.).**(Favour to father-in-law of Shri Kandappan).**

(a) From the evidence placed before the Commission, it has been established that there was some discrepancy between the declaration of wealth filed by Shri S. Kandappan for the year ending 31st March 1972, and his Income-tax return for the same year, but it is not possible to conclude that he had intentionally filed a false declaration of wealth.

(b) The loan of Rs. 1,77,000 granted by the Tamil Nadu Industrial Investment Corporation to Shri S. P. Rangaswami Gounder, proprietor of Messrs. Mani Rice and Oil Mills, Tiruchengode, and father-in-law of Shri S. Kandappan, was sanctioned without proper verification and in violation of the guidelines laid down in the rules of the Corporation. The disbursement of Rs. 74,550 to Shri Rangaswami Gounder in one lump-sum was made in a hurry and without any kind of scrutiny. The officials of the Corporation were also induced by a false statement made by Shri Gounder that he had already purchased and installed an Expeller. The loan was definitely misused and was not spent for the purpose for which it was sanctioned ; although it has not been established that it was spent by Shri Gounder for opening Arrack shops. The officials of the Corporation failed to take effective follow-up action on the Board's resolution foreclosing the loan. Recovery action has been initiated only after imposition of the President's rule.

Shri Madhavan, the then Minister for Industries, had exercised pressure on the officials of the Corporation at the time of the sanction and disbursement of the loan as well as for delaying follow-up action on the Board's resolution of foreclosure.

ALLEGATION No. 15](NEW GLOBE THEATRE).

It has been fully proved that in moving, piloting and getting passed the Amendment Bills 4 of 1972 and 24 of 1973 introducing certain amendments to the Madras City Tenants, Protection Act, 1922, S/Shri Karunanidhi, the then Chief Minister, P.U. Shanmugham, the then Revenue Minister and S. Madhavan, the then Law Minister, were actuated with the oblique motive to benefit Shri Varadaraja Pillai. It has not been established beyond all manner of doubt that the respondents had received any illegal gratification from Shri Varadaraja Pillai for causing these amendments. The evidence on record, however, establishes a strong possibility, verging on probability, falling short of positive certainty, in favour of the allegation that the aforesaid amendments were got enacted in consideration of the receipt of some gratification by S/Shri Karunanidhi and P. U. Shanmugham.

**ALLEGATION No. 16—MUD FOR OFFICERS AND MONEY FOR MINISTERS
(FAVOUR TO EDITOR, “ BROADWAY TIMES ”).**

The order of Shri Karunanidhi withdrawing the prosecution against Shri Mathew Cherian of “ Broadway Times ” summarily, and capriciously, when the prosecution had been sanctioned after due consideration and in consultation with the Law Department, was definitely an act of favouritism and also amounted to interference with the course of justice.

The order of Shri Karunanidhi rescinding the order blacklisting the firm, Thompson & Co., against the advice of all the senior officers as well as of the then Minister for Industries, Shri Madhavan, and without even waiting for his two other Cabinet colleagues, views in the matter, was definitely an act of favouritism.

Shri Karunanidhi’s judgment in both the cases seems to have been influenced by the fact that Shri Mathew Cherian was very close to his nephew, Shri Maran.

The allegation that Shri Karunanidhi kept corrupt officers like Shri P. K. Nambiar and Shri Pasupathy in key posts so as to fill up his coffers, has not been substantiated. The appointments of Shri P. K. Nambiar as Revenue Commissioner in the Board of Revenue and Shri Pasupathy as Secretary, Revenue, were made in accordance with their seniority in the I.A.S. Cadre and considering other relevant aspects. It cannot be said that either of these appointments was improper. As far as Shri Vaithialingam is concerned, this will be dealt with separately while dealing with Allegation No. 9, which specifically relates to him.

ALLEGATION No. 19 (A. L. SRINIVASAN).

(a) It has been established that Shri Karunanidhi's decision, that Shri A. L. Srinivasan should be given a Brewery licence was in violation of the prescribed procedure and the established norms. Shri Srinivasan was not of sound financial standing and did not, therefore, satisfy the first criterion for selection laid down by Shri Karunanidhi, himself. He had not even applied in the prescribed form, and he did not have a piece of land for locating the project when Shri Karunanidhi took this decision, which was an act of favouritism to a close associate.

(b) The allegation that Shri A. L. Srinivasan tried to forcibly acquire ownership of about 100 acres of land in the vicinity of Madras City through the influence of the Chief Minister and the Revenue Board, has not been substantiated.

ALLEGATION No. 22 (C)—Shri ANBIL DHARMALINGAM**(Eviction of tenants from Thathachari Estate).**

The allegation that Shri Anbil Dharmalingam helped Shri Thathachari, a landlord, to evict his tenants forcibly from the lands in their possession, has not been substantiated.

ALLEGATION No. 22 (D)—Shri ANBIL DHARMALINGAM**(Jangamarajapuram Murder Case).**

It has been established beyond doubt that the investigation of the Jangamarajapuram murder case was conducted in a most improper, partial and perfunctory manner. In connection with the investigation and prosecution of this case, several acts of impropriety, partiality and irregularity were designedly committed by the Investigating Officer, Superintendent of Police and Public Prosecutor, to save the three accused who were closely related to the Minister, Shri Anbil Dharmalingam, from prosecution with consequent failure of justice. There is, however, no direct evidence to show that Shri Anbil Dharmalingam or any other Minister had spoken to them or influenced them in the conduct of the investigation or the prosecution of the case.

The erstwhile D.M.K. Government did not direct the filing of an appeal against the order of acquittal passed by the trial court, nor did they direct any action to be taken to get the strictures expunged. Nor did they proceed against the Police Officers whose faulty and biased investigation had led to the failure of justice. Shri Anbil Dharmalingam in his counter-affidavit also made a wrong statement that the D.M.K. Government had called for explanations from the concerned Police Officers, which were found to be acceptable. No such explanation was ever called before the imposition of the President's rule in Tamil Nadu. Although these circumstances do raise a strong suspicion that the Investigating Officer, Superintendent of Police and the Public Prosecutor misconducted themselves, possibly under influence or interference from Shri Anbil Dharmalingam or any of his Cabinet colleagues, the evidence adduced before the Commission is not sufficient to establish this fact beyond doubt.
